United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

ORIGINAL

75-2066

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P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-2066

UNITED STATES ex rel. FRANCISCO MARTINEZ, a/k/a TONY CRUZ,

Petitioner-Appellant,

-against-

WARDEN JAMES A THOMAS,

Respondent-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR PETITIONER-APPELLANT

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UNITED STATES COURT OF APPEALS
FILED
JUN 4 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

74 cv 167

Jury demand date:

. C. Form No. 106 Rev.

JUDGE TYLER

TITLE OF CASE	ATTORNEYS
U.S.A. ex rel., FRANCISCO MARTINEZ a/k/a TONY CRUZ, -V- WARDEN JAMES A. THOMAS,	For plaintiff: Francisco Martinez,#346-72-4199 14-14 Hazen Street East Elmhurst,N.Y.,11370 4-17-74 For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISP.
J.S. 5 mailed XXXXXXX	Clerk					
J.S. 6 mailed ✓	Marshal					
Basis of Action: Writ of Habeas Corpus 28 Usc 2241	Docket fee					
	Witness fees					
Action arose at:	Depositions					

JUDGE TYLER 74 CIV. 161

U.S.A. F.Martinez A/K/A T. CRUZ -V- James A. Thomas

DATE	PROCEEDINGS	Date Order Judgment
.10,74	Filed petition for writ of habeas corpus.	
.10,74	Filed order granting petitioner to proceed in forma pauperis.Metzner,J.	
.31-74	Filed order extending time of respondent to file opposition to petitioner's application for a writ of habeas corpus to 3/4/74-Brieant, J.	
r.7-74	Filed order extending time of respondent to file opposition to petitioner's application for a writ of habeas corpus to 4/2/74-Pollack, J.	
.4.74	Filed deft. affidavit in opposition to pltff. Writ of Habeas Corpus.	
. 26, 74	Filed Notice of Assignment to Tyler,J.	
2-74	Filed MEMORANDUM-Pursuant to Provisions of 28 USC,Sec.636(b)(3) the within application for habeas corpus relief is respectfully referred to Magistrate Jacobs,Adm.Magistrate for assignment hereof and subsequent report to this Court.So Ordered.TYLER,J. (Notice to be mailed by Pro Se Clerk)	
y [redacted]-74	Filed MEMORANDUM.-with attached documents(recd 5/9/74)directing Pro Se Clerk to send same to Magistrate Jacobs to whom matter was referred to for study and report.TYLER,J.	
6-74	Filed report and recommendation on Habeas Corpus petition Magistrate Gerard L. Goettel	
24-74	Filed memorandum $41000 RE: Magistrate Goettel report dated June 27, 1974. "as soon as practicable, counsel for the parties should call chambers to arrange a pre-hearing conference-so ordered- TYLER, J. M/N	
.22-74	Filed Petitioner's Request for production of Relator.	
.27-74	Filed Memo End.on Affdvt by Relator Tony Cruz in support of motion for leave for bail. Motion for enlargement of the relator on bail pending hearing is denied. So Ordered.Tyler,J.	
/28/74	PRE-TRIAL CONFERENCE HELD BY [illegible]	
.9-74	Filed Petitioner 's Order authorizing counsel to obtain services of a psychiatrist. Ordered.that counsel for petitioner is herby authorized to obtain services of Dr.Augustus F.Kinzel to assist in preparation of petitioner's case in habeas corpus proceeding.Tyler,J.(mn by Pro Se Clerk)	
c.10-74	Trial begun before Tyler,J,with non-jury.	
c.11-74	" concluded .Judge's Decision reserved.	
/24/74	[illegible]	
/11/74	[illegible]	
/25/74	[illegible]	
2/7/74	[illegible]	
.26-75	Filed Petitioner's proposed findings of fact & conclusions of law.	
2/24/75	Filed transcript of record of proceedings, dated 12/10/74	
.27-75	Filed CJA 21 appointment of August F.Kinzel,M.D.,[illegible] E.75th St.,NYC10021 .Tyler,J. (mailed copies CJA Clerk)	
-03-75	Filed CJA 21 approval for payment of fees of Augustus F.Kinzel,M.D.Tyler,(mailed copies CJA Clerk)	
/75	Filed OPINION#42186.Having conducted an evidentiary hearing&ruled upon all issues in this case,this Court holds that petition for habeas corpus relief must be and is denied in all respects,etc.So Ordered.Tyler,J(mn by Pro Se Clk)	
07/75	Filed Petitioner/s Notice of Appeal from order and judgment denying petition for writ of habeas corpus 4/4/75.	
07/75	Filed Petitioner's Application for Certificate of Probable Cause and for Leave to Proceed in forma pauperis.	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [illegible] Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES ex rel. FRANCISCO MARTINEZ a/k/a Tony Cruz,

Petitioner,

-against-

WARDEN JAMES A. THOMAS,

Respondent.

----------X

#42186

OPINION

74 Civ. 161 HRT

APR 4 3 25 PM '75
S.D. OF N.Y.

DEBEVOISE, PLIMPTON, LYONS & GATES, ESQS., New York City, by DOUGLAS S. EAKELEY, ESQ., Attorneys for Petitioner.

LOUIS J. LEFKOWITZ, ESQ., Attorney General of the State of New York, by RALPH LEWIS McMURRY, ESQ., Attorneys for Respondent.

TYLER, D.J.

In this habeas corpus proceeding, petitioner, Francisco Martinez, challenges a judgment of the Supreme Court of New York, New York County

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iellinoff, J.), rendered after a trial by jury. Petitioner there was found
ailty on August 12, 1966, of attempted robbery in the first degree, attempted
rand larceny in the first degree, assault in the second degree, and possession
f a dangerous weapon as a felony. He was sentenced on October 4, 1966
, concurrent terms of imprisonment, the longest of which was seven and
ne-half to fifteen years. Although he was paroled on March 15, 1972, petitioner
as rearrested on July 31, 1972 on a variety of charges and was charged on
ugust 8 with violation of his parole. His original sentence was reinstated,
nd he is currently serving the remainder of his original term. Hence his
pplication for habeas relief is not moot.

On behalf of petitioner, the Legal Aid Society filed a notice of appeal
rom the judgment of conviction on October 4, 1966, which appeal was dismissed
s abandoned on April 15, 1968, pursuant to § 535 of the former New York Code
f Criminal Procedure, People v. Martinez, N.Y.L.J., June 25, 1968, p.2.
However, respondent concedes that petitioner has exhausted available state
remedies as required by 28 U.S.C. §§ 2254(b) and (c), as petitioner raised
he substance of his claims in an application for a writ of error coram nobis
n Supreme Court, New York County. After a hearing on that matter on
February 13 and 14, 1969, the application was denied by Mr. Justice Martinis
on June 9 of that year. Denial of the writ was affirmed unanimously by the

Appellate Division, First Department. A second application by petitioner for a writ of error coram nobis, made on essentially the same grounds, was denied on April 13, 1971 by Gellinoff, J., who relied on the findings of the court on the previous application.

In this court, petitioner alleges that his 1966 conviction violated his constitutional rights under the Sixth and Fourteenth Amendments in that he (a) was not permitted trial counsel of his own choosing; (b) was compelled by the trial judge to act as his own attorney; (c) was not granted an adjournment for the purposes of retaining counsel and locating defense witnesses; and (d) was mentally incompetent to waive his right to counsel and to represent himself, a question about which the trial judge failed to make diligent inquiry at any time prior to the imposition of sentence. 1/

Petitioner's application was referred to United States Magistrate Gerald L. Goettel of this court, pursuant to 28 U.S.C. § 636(b)(3). On June 27, 1974, Magistrate Goettel submitted his report, finding that the state

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1/ Another claim, that petitioner's right to direct appeal should have been reinstated because he was unable to file a notice of appeal due to obstruction by prison officials, has not been pursued by petitioner and will not be considered.

5.

coram nobis hearing before Mr. Justice Martinis did not meet the requirements of 28 U.S.C. § 2254(d), so that this court need not presume the correctness of the factual determinations made at that hearing. In a memorandum dated July 23, 1974, this court approved Magistrate Goettel's report and accordingly directed that an evidentiary hearing be held on the many issues raised by petitioner's application. At that evidentiary hearing, held on December 10 and 11, 1974, petitioner was represented by able counsel, excerpts from petitioner's extensive psychiatric records were introduced, and testimony was heard, inter alia, from the trial judge, petitioner's appointed counsel, and a psychiatrist who had recently examined petitioner.

PSYCHIATRIC HISTORY OF PETITIONER

Petitioner's psychiatric records may perhaps best be summarized as extensive but inconclusive and even conflicting on the issue of petitioner's probable competence to waive counsel and represent himself in 1966. At Wassaic State School, where petitioner was sent at age 12 for approximately one year, beginning January, 1951, he was classified as a moron with an I.Q. of 63. In a mental examination of February 16, 1951, however, it was found that:

> "[h]is stream [of mental activity] is coherent and relevant. Speaks two languages perfectly..."

6

and that:

> "He is fairly well oriented to place and person, poorly to time. Memory good for remote and recent events. Retention and recall good. Insight and judgment fair." [2]

After brief stays at Bellevue in 1952 and September, 1954, Martinez was admitted to Kings Park State Hospital, where he was diagnosed as "Psychosis with psychopathic Personality" and found "incapable of handling his impulsivity," but at the same time "well oriented in all spheres and his memory was quite good for recent and remote events." His I.Q. was 76, "Borderline." When he was discharged in July, 1956, the diagnosis was the same, but his condition was described as "Improved". [3]

At Eastern Correctional Institution, a psychiatric note about petitioner, dated October 7, 1960, found that then he suffered from no mental disorder. [4] Similarly, a psychiatric report from Attica State Prison, dated December 19, 1961, found that Martinez was not psychotic. [5]

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[2] Petitioner's Exhibit 6-A.

[3] Petitioner's Exhibit 6-B.

[4] Petitioner's Exhibit 6-C.

[5] Petitioner's Exhibit 6-D.

At Bellevue, however, where petitioner voluntarily sought treatment of his drug habit in February, 1965, but escaped shortly after entering, a psychiatric report concluded that:

> "A psychotic character disorder is indicated with marked sociopathic trends. It is felt that when under duress, he might act out quite irresponsibly." 6/

After his 1966 trial, Martinez was examined at Rikers Island where the Psychiatric Division reported on December 27, 1966 (the day after petitioner attempted to escape and 2-1/2 months after he was sentenced) that:

> "On interview, this inmate is rather verbal, coherent and relevant. His stream of thought is sustained and he does not show psychotic or schizophrenic trends at this moment. DIAGNOSTIC IMPRESSION: No psychosis at this time." 7/

Further examinations of Martinez in February and May, 1967, September, 1968, and on other dates up to February, 1972, led to conflicting impressions or diagnoses, some finding psychosis and some not. Indeed, at least one physician in this period deemed Martinez to have "recovered" from any symptoms of depression or other form of mental or emotional illness or disorder.

6/ Petitioner's Exhibit 6-E.

7/ Petitioner's Exhibit 6-F.

Without setting forth more detail, suffice it to say that the medical records tend to support the testimony of Dr. Gorlicki at the state coram nobis hearing that Martinez is a person who has periods of normalcy [8], times when he does not suffer from any mental defect and thus can understand trial procedures, [9] as well as times when he would be in a psychotic or schizoid state. [10]

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[8] Coram Nobis Hearing Transcript [CNT] at p. 78. The transcript of petitioner's 1966 trial will be referred to as "TT", that of his federal evidentiary hearing as "FHT".

[9] CNT at p. 84.

[10] Dr. Augustus Kinzel, who had never seen petitioner before the federal evidentiary hearing and interviewed him twenty minutes at that time, but had studied some of petitioner's medical records, testified at the hearing that he believed petitioner, in 1966, suffered from a form of chronic schizophrenia that did not involve relapses, FHT at 74. However, he admitted that a chronic schizophrenic is not necessarily incompetent to stand trial or to make his own defense, FHT at 74. Therefore, even by his description of petitioner's condition, petitioner's psychiatric records would not by themselves indicate whether petitioner was competent to waive counsel and represent himself.

The apparently mediocre preparation of petitioner's defense prior to trial was due to a number of factors, not the least significant of which was petitioner's own lack of cooperation with and repeated changing of his attorneys.

Martinez first appeared in court on March 9, represented by private counsel, Mr. Steven Gottlieb. However, he never discussed the merits of the case or his possible defenses with Gottlieb, FHT at pp. 179-80, but dismissed him when Gottlieb was unable to obtain a reduction of petitioner's bail, and was granted an eleven-day adjournment on April 1 in order to get another lawyer.

Petitioner next privately retained Faustino Garcia, Esq., but again, never discussed the merits of the case or possible defenses with him - only questions of bail. On May 5, Mr. Garcia obtained an adjournment of two weeks in order to get in touch with petitioner's family, but Martinez was unsuccessful in his pro se request for reduction of bail. On May 19, petitioner appeared in court and announced that he had no lawyer, having relieved Mr. Garcia. Petitioner answered affirmatively when asked if he wished the court to appoint counsel for him (Petitioner's Exhibit 4-G at p. 2),

though he claimed at the hearing before this court that he wasn't asked such a question and that he wanted his own attorney from the very beginning, FHT at 180, 181. Therefore, the trial court asked the Legal Aid Society to discuss the case with petitioner, and the case was again adjourned, this time until June 2.

Mr. Leopold, the Legal Aid attorney present in court on May 19 when petitioner indicated he wished counsel appointed, interviewed petitioner on May 24. FHT at 16. Though indicating at that time that he had alibi witnesses, petitioner refused to give their names and addresses to Leopold.[11/] As with both of his privately retained counsel, Martinez did not discuss his mental history with Leopold and "...was lucid, coherent, responsive, seemed to understand what was going on," FHT at p. 38, so that Leopold had no "glaring reason" to suspect petitioner's previous institutionalization. FHT at p. 38. Nor did the Legal Aid investigation,

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11/ Petitioner's Exhibit 5 (Legal Aid files): 5/24/66 Statement of Martinez taken by Leopold: "I have alibi witnesses but I don't want to give their names and addresses."

11

unfinished when the trial commenced, reveal petitioner's mental history. FHT at 32, 36-7.

Unfortunately, Leopold went on vacation for at least the month of July, FHT at 14, and communications within the Legal Aid Society appear to have broken down. Martinez's case was called on June 2 and June 16, and on June 20 Mrs. Cropper, appearing for the Legal Aid Society, agreed to July 5 as the trial date. No one appeared for Martinez on July 5, however, and the case was marked ready for trial. On July 7 and July 8 the case was called, and Miss Selwyn of Legal Aid, ascertaining that Leopold was the attorney of record, asked for an August trial date. On August 3, Leopold appeared before Mr. Justice Brust to request a two-week adjournment because the investigation was still pending and in order to produce a distant witness. But Mr. Justice Brust, informed by the Assistant District Attorney that this case had been on sixteen times and had been answered ready in early July, refused to grant an adjournment, especially as petitioner had been in custody since February 15. The Justice did inform Leopold that the court would accommodate him if he needed a couple of days to get witnesses. Petitioner's Exhibit 4-M at p. 6.

Martinez, on August 3, did give Leopold the first names, but not surnames or addresses, of two alibi witnesses. Upon appearing before Mr. Justice Gellinoff in the trial part on August 4, Leopold requested an adjournment to enable him to find those witnesses. TT at 2. He also reported that petitioner that morning had stated he did not want Leopold to represent him. TT at 3. While indicating that the court would allow an adjournment for a day or two to locate the witnesses if such adjournment became necessary, Mr. Justice Gellinoff disapproved of petitioner's request to discharge Leopold, as the judge viewed the request as a maneuver to get another delay. TT at 5; FHT at 88.

There followed a lengthy discussion in which petitioner reiterated that he did not want Leopold as his attorney but rather wanted his "own private lawyer" and a delay to get such, the court's refusal to relieve Leopold and grant such a delay, and Martinez then announcing that he wanted to represent himself. TT at 6-12.

The court did not then specifically inquire into the reasons for petitioner's decision to represent himself or into petitioner's background concerning his competency to represent himself. The judge did direct Leopold to remain at the defense table, to do whatever he could to help

petitioner as though Leopold were still counsel (TT at 15) or co-counsel with petitioner (TT at 15, 16), and advising petitioner to let Mr. Leopold make objections "to protect things that you don't know about." TT at 12.

Jury selection began, with Martinez expressing ignorance of the questions to ask but refusing to let Leopold conduct the voir dire. TT at 25, 26. Moreover, although the court and Leopold discussed adjourning that same day at 3:30 P.M., and the next day at noon so that petitioner could locate his witnesses with the aid of Leopold's office, petitioner indicated he wanted to work through without any adjournment. TT at 31. Furthermore, Martinez refused to give his mother's address or any further information about the witnesses to Leopold. TT at 31. The judge, therefore, did not adjourn the case, but directed that Leopold remain. TT at 31.

Although refusing to grant an adjournment so that petitioner might seek new counsel, Mr. Justice Gellinoff throughout the trial sought to aid petitioner in the investigation and presentation of his case. He tried to help petitioner locate his mother (TT at 35, 42) and witnesses (TT at 45-6, 61-2), discussed with him whether he should take the stand (TT at 171-73), objected to evidence (TT at 78) and made motions (TT at 136-7, 196-7) for petitioner, explained to petitioner the law of prior crime and the meaning

of a proposed stipulation (TT at 114, 112), and offered to take recesses (TT at 103) or adjourn the case (TT at 140) to facilitate petitioner's representing himself. On August 10, the fifth day of the seven-day trial, petitioner requested an adjournment on the grounds that there was a lawyer who was willing to represent him, but such lawyer had a case in another part that morning. The court, however, refused to grant an adjournment despite petitioner's repeated pleas and complaint that he was being forced to go to trial. TT at 144-5.

With some initial problems, Martinez ultimately conducted the voir dire of jurors, cross-examined prosecution witnesses, objected to certain leading questions by the prosecutor (TT at 85), summoned and questioned defense witnesses, and delivered a summation; in short, he was clearly in charge of representing himself. Though he may have conferred with and asked questions of Leopold during the trial, FHT at 41-2, petitioner appears to have made the decisions; Leopold did not volunteer information or give advice. FHT at 29, 41, 185.

Mr. Justice Gellinoff apparently had no inkling of petitioner's psychiatric history until he received petitioner's pre-sentence report,

prepared by the New York Supreme Court Probation Department. Petitioner's Exhibit 7; FHT at 111. That report was itself incomplete, but did indicate something of the psychosis/no psychosis conflict which characterizes petitioner's psychiatric records, as noted supra.

At the sentencing, petitioner said he would like to go to Bellevue for observation. TT - sentencing at 4. Leopold, who was asked by petitioner to speak on his behalf, also suggested that perhaps petitioner should be examined by a psychiatrist. TT - sentencing at 5. So also did Mr. Segal, a private attorney who had not witnessed the trial but had interviewed petitioner and appeared at his mother's request. TT - sentencing at 8. Noting petitioner's performance during the trial and the sentencing, the court refused to commit petitioner, finding that:

> "Insufficient has been shown to warrant the Court's arriving at the conclusion that there is even a question as to this man's ability to understand the nature of the proceedings or to be able to make his defense." TT-sentencing at 9.

The court then imposed sentence.

CONCLUSIONS OF FACT AND LAW

Before this court attempts to determine petitioner's competency to waive counsel,[12/] it ought first to determine whether the trial judge complied with his duty under Johnson v. Zerbst, 304 U.S. 458 (1938), to determine that petitioner's waiver of counsel was competent and whether the evidence before the trial court or events occurring during the trial or sentencing were such that the trial court had a constitutional duty to inquire into petitioner's competency, Westbrook v. Arizona, 384 U.S. 150 (1966). If the trial court ought to have inquired into the issue of petitioner's competence to waive counsel, but did not make such inquiry, Westbrook mandates the issuance of the writ of habeas corpus or a new state trial even if this court has not conclusively determined that petitioner was incompetent. Westbrook, supra, 384 U.S. at 151; see Pate v. Robinson, 383 U.S. 375, 386-387 (1966). Even if the trial court was not presented with sufficient evidence to mandate an inquiry, was the failure of petitioner's assigned counsel to discover and reveal petitioner's psychiatric records to the court of sufficient gravity as to deny petitioner effective representation of counsel in violation of the Sixth and Fourteenth Amendments?

12/ Petitioner does not appear to contest, and testimony of his witnesses in fact supports, his competence to stand trial. FHT at 75-76.

The difficulty, as this court perceives it, is that the line of demarcation between two conflicting constitutional rights - a defendant's Sixth Amendment right to counsel and his right to represent himself pro se [13] - is the validity of the defendant's waiver of counsel, which must be made competently and intelligently, Johnson v. Zerbst, supra. A retrospective determination of such competency, like a retrospective determination of competency to stand trial, is exceedingly difficult, as the Supreme Court has recognized:

> "...we have previously emphasized the difficulty of retrospectively determining an accused's competence to stand trial. Dusky v. United States, 362 U.S. 402 (1960). The jury would not be able to observe the subject of their inquiry, and expert witnesses would have to testify solely from information contained in the printed record. That Robinson's hearing would be held six years after the fact aggravates these difficulties." Pate v. Robinson, 383 U.S. at 387.

In this case, the trial took place almost nine years ago.

Accordingly, the Supreme Court has required that the trial judge make a determination of the defendant's competency at the time the waiver

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[13] See United States v. Plattner, 330 F.2d 271 (2d Cir. 1964).

is made and has urged, but not made a constitutional requirement, that such a determination be on the record.[14] It is clear that as part of that determination, a trial judge must order an inquiry specifically into the issue of a defendant's competency to waive counsel if the defendant's competency is otherwise brought into question. Westbrook v. Arizona, supra. The Supreme Court has not established the nature or quantum of evidence necessary to require the judge to hold such a hearing, but a sensible

---

[14] See Johnson v. Zerbst, supra, 304 U.S. at 465: "While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record." See also Carnley v. Cochran, 369 U.S. 506, 516 (1962): "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer." (emphasis supplied) In this case, the record shows that petitioner rejected his appointed counsel, and the evidence available to the trial judge at that time supports his allegation that it was a competent and intelligent waiver, but his determination is not on the record.

standard would be that applied to hearings on competence to stand trial - evidence providing a "reasonable ground" for belief of incompetence.[15] Furthermore, though a competent waiver of counsel is binding even if a defendant's pro se representation turns out to be inadequate and ineffective,[16] events during the trial which raise a doubt as to his competence - as opposed to his skill or ability - to represent himself require the judge to hold a hearing at that time.[17]

The problem in this case is that there was little, if any, evidence before the trial judge at the time petitioner announced his waiver or even during the trial that he was not competent to make such a waiver; Martinez was lucid, showed an awareness of trial proceedings and the consequences,[18]

15/ The Court in Westbrook referred to Pate v. Robinson, supra, which derived its "bona fide doubt" standard for competency hearings from the Illinois statute applicable in that case and did not prescribe a general standard, Drope v. Missouri, 43 L.W. 4248, 4251 (Feb. 19, 1975). In United States ex rel. Roth v. Zelker, 455 F.2d 1105 (1972), the Court of Appeals for this circuit derived its "reasonable ground" standard for similar competency hearings from New York state law([1939] N.Y. Laws ch. 861 § 2, formerly Code Crim. Proc. § 658), 455 F.2d at 1108.

16/ See United States v. Calabro, 467 F.2d 973, 985 (2d Cir. 1972), cert. denied, 410 U.S. 926.

17/ The Supreme Court has so held for competence to stand trial, Drope, supra, 43 L.W. at 4254.

18/ See trial transcript and CNT at 27, 33.

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17/ The Supreme Court has so held for competence to stand trial, Drope, supra, 43 L.W. at 4254.

18/ See trial transcript and CNT at 27, 33.

and had had both private and appointed counsel, thereby indicating that he was aware of his right to have counsel appointed. Unlike the situation in Drope v. Missouri, supra, or Pate v. Robinson, supra, there was no evidence of petitioner's mental history presented to the trial court at any time prior to sentencing. Nor does this court find petitioner's behavior at any time during the trial sufficiently suspect as to raise a doubt concerning petitioner's competence to waive counsel. To hold that the trial judge, given no irrational behavior by petitioner to excite his suspicion, should have held such a hearing as would have uncovered petitioner's psychiatric records is tantamount to making such hearing a constitutional requirement in all cases where a defendant requests to represent himself. Though such a procedure might be useful and would certainly facilitate review by appellate or federal courts, this court cannot find that such a procedure is constitutionally mandated in all circumstances. Under the circumstances known to Mr. Justice Gellinoff, therefore, his determination, though not specifically stated on the record, was constitutionally adequate.

Even at the time of sentence, when the trial judge had before him a probation report which noted some of petitioner's mental history and when petitioner and others on his behalf requested that he be examined psychiatrically, the evidence taken as a whole was not such as to mandate

an inquiry into petitioner's competence. The probation report contained a reference to petitioner's institutionalization at Wassaic and Kings Park over a decade earlier, but also referred to a 1959 clinical diagnosis of "without psychosis". When weighed with the evidence of petitioner's reasonably rational behavior at trial, this inconclusive, old mental history and the belated arguments of petitioner's partisans did not necessarily raise a reasonable ground for belief of incompetency so as to require further inquiry. See United States ex rel. Roth v. Zelker, supra; United States ex rel Rizzi v. Follette, 367 F.2d 559 (2d Cir. 1966). At no time, therefore, did the trial judge have a duty under Westbrook to hold a separate hearing or inquiry into petitioner's competence to waive counsel.

Concerning the failure of petitioner's assigned counsel to discover and reveal to the court petitioner's psychiatric records, it must be recalled that Martinez did not mention those records to any of his counsel and that Mr. Leopold in his interviews found Martinez to be lucid and coherent. Nor do the Legal Aid files indicate grounds for questioning petitioner's competence at the time. Petitioner's apparent rationality distinguishes this case from McLaughlin v. Royster, 346 F. Supp. 297 (E.D. Va. 1972), which petitioner cites in support of his allegation of his counsel's ineffectiveness. There the court found that the offender, who was "literally paralyzed with fear of the

death penalty," had expressed his extreme and irrational concern to his counsel, 346 F. Supp. at 300. In fact, petitioner's behavior in that case was sufficiently questionable that he was committed shortly after arrest to a state mental hospital for observation by order of the state's attorney, id. at 299.

In this case, to hold that counsel had a duty to search for possible psychiatric records where he had no suspicion of a previous mental history is tantamount to a blanket requirement that counsel in all felony cases make extensive investigations for possible psychiatric records. Although such a procedure is certainly to be recommended, I do not believe that it is constitutionally mandated. Therefore, counsel's failure to produce petitioner's mental records did not deny him effective assistance of counsel in violation of the Sixth and Fourteenth Amendments.

Separate from the Westbrook-Pate issue and the question of counsel's duty to produce psychiatric records is the question of whether petitioner in fact was competent to waive counsel, see McLaughlin, supra, 346 F. Supp. at 309. Although neither judge nor counsel had a duty to inquire into petitioner's psychiatric records on the basis of the evidence available to them, if this court finds from all the evidence that petitioner was incompetent to waive

his right to counsel, then petitioner was denied due process at his trial, Johnson v. Zerbst, supra; Rice v. Olson, 324 U.S. 786 (1945); Carnley v. Cochran, supra.

Some of the standards which the Court of Appeals for this Circuit has used to analyze the competency of a defendant's waiver include:

> "...whether the defendant understood that he had a choice between proceeding pro se and with assigned counsel, whether the defendant understood the advantages of having one trained in the law to represent him, and whether the defendant had the capacity to make an intelligent choice." United States v. Spencer, 439 F.2d 1047, 1050 (1971).

Given petitioner's conflicting psychiatric reports or the periodic nature of his disorders, as noted supra, it would appear that petitioner's behavior at the time of the trial as shown by the trial transcript and as interpreted by persons in contact with petitioner during the trial is the best indicator of his competence at that time, as those persons had some opportunity to observe his demeanor.

Mr. Leopold, though stating that there had been "several outbursts of loud, emotional, and perhaps close to violent nature" by petitioner, testified that "[h]e remained coherent, able to communicate verbally," and that he seemed "particularly knowledgeable" about "the procedures in court, what a court was, what was going on, course of examination of witnesses." 19/

19/ FHT at 46, 47.

Mr. Justice Gellinoff noted that if he had had "the slightest inkling" that anything was wrong with petitioner, he would have adjourned the trial (FHT at 92), but that his early conversations with petitioner about witnesses and the jury convinced him that petitioner was competent to waive his rights. FHT at 90.

A review of the record supports Leopold's recollections. Petitioner presented his alibi fairly cogently in his opening (TT at 74), correctly objected to the prosecutor's leading questions (TT at 85), detected a discrepancy in the testimony of the victim and a patrolman (TT at 170-71), and pointed out the discrepancy to the jury in his summation (TT at 203) as the judge had suggested (TT at 172), and requested the judge to instruct the jury not to hold it against him for not taking the stand. TT at 249. Except for petitioner's emotional outburst when he wanted to be allowed to stay at Rikers Island - and through which outburst he was permitted to stay there (TT at 124-28) - and his protests as he sought delays to get his own lawyer (TT at 145), petitioner appears to have been rational and observant[20/] throughout the trial.

20/ Petitioner's "suspiciousness" in requesting that the prosecution witnesses not be permitted to speak with each other [TT at 47-48] was scarcely excessive in light of the discrepancy he found in their stories. His interest in obtaining an impartial jury and memory of prior proceedings might well have prompted his question why the jury wheel was not spun. TT at 64-65.

Thus, this court finds that defendant, on the basis of his earlier experiences with private and assigned counsel, understood that he had a choice between proceeding pro se and with assigned counsel, understood the advantages of having an attorney represent him, and demonstrated that he had the capacity to make an intelligent choice - in short, that he was competent to waive counsel.

Furthermore, petitioner did make a competent and knowing waiver of counsel in this case. Although the trial judge did not specifically discuss the consequences of the waiver with petitioner, the particular circumstances of this case - including the judge's having counsel remain to advise petitioner (which counsel did warn petitioner of the dangers of proceeding alone, FHT at 48) and petitioner's past experiences with counsel - were such as to indicate to the judge that specific instructions were not necessary. See United States v. Rosenthal, 470 F.2d 837, 845 (2d Cir. 1972), cert. denied, 412 U.S. 909. That petitioner's reason for announcing his decision to represent himself - a calculated "bluff" (FHT at 153) to get the trial judge to grant a further adjournment so that petitioner could get a private lawyer (FHT at 186, CNT at 42) or obtain witnesses (FHT at 153) - did not succeed does not prevent his decision from having been a reasoned choice.

Martinez also contends that his Sixth Amendment right to counsel was denied by (1) Mr. Justice Gellinoff's refusal on the first day of trial to dismiss petitioner's assigned counsel and adjourn to permit petitioner to seek another lawyer and (2) the judge's subsequent refusal, on the fifth day of a seven-day trial, to adjourn proceedings so that another attorney could appear for petitioner. Martinez claims that by refusing to dismiss Leopold, who was unprepared, the judge in effect forced petitioner to represent himself.

Although an accused has a right to counsel of his own choice, Chandler v. Fretag, 348 U.S. 3, 9-10 (1954); this right is subject to the necessities of sound judicial administration, United States v. Arlen, 252 F.2d 491, 494 (2d Cir. 1958), and may not be used as a tactic to delay trials. United States ex rel. Jackson v. Follette, 282 F. Supp. 993, 995 (S.D.N.Y. 1968), aff'd, 425 F.2d 257 (2d Cir. 1970). Informed by the court clerk and Mr. Leopold that Leopold was the third attorney to appear for petitioner in that case (TT at 6), and not informed of any specific attorney that petitioner hoped to retain, the trial judge had ample cause for suspicion that petitioner's request for another attorney was a delay tactic, which

suspicion the judge expressed. TT at 7, FHT at 88. Petitioner had had five months to choose his own lawyer and had already received some adjournments for this purpose, as noted supra. He had thus had a reasonable time to retain counsel, see United States v. Casey, 480 F.2d 151 (5th Cir. 1973), and it was well within the court's discretion to deny another request for an adjournment to retain new counsel.

Present counsel for petitioner seeks to justify petitioner's rejection of assigned counsel on the ground that counsel was unprepared. But that does not appear to have been petitioner's reason, either as suggested in the trial transcript ("I want my own lawyer, a street lawyer," TT at 8) or as stated in the state coram nobis hearing several years ago. 21/

21/ "Q: Was there something about Mr. Leopold's personality that you didn't like? A: Yes. Just that I felt that a private attorney was the proper lawyer for this case or for any case that I would have pending." CNT at 26-27.

"Q: Now Mr. Martinez, let me ask you this: Did you feel that a private attorney might be able to do a better job for you? A: No,sir." CNT at 27.

More importantly, Martinez certainly contributed to his counsel's lack of preparedness. Although he had indicated to the court on May 19, 1966 that he wanted appointed counsel, petitioner did not provide that counsel with even the first names of possible witnesses until the eve of trial, as noted supra, and it appears that from the outset Martinez did not intend to work with appointed counsel. 22/

By the time a private attorney was retained, appeared in court, and asked to represent petitioner, the trial was more than halfway completed, and the trial judge had ample administrative reasons for refusing an adjournment at that time.

This court, therefore, concludes that petitioner's rights were not abridged by Mr. Justice Gellinoff's refusal to grant a continuance so that petitioner might seek new counsel.

22/ "Q: Did Mr. Leopold explain to you exactly what the charge meant?
A: I never gave him a chance, because I didn't want him for my attorney.

"Q: Let me ask you this, Mr. Martinez: You said that you couldn't, am I correct, that you couldn't discuss the case with Mr. Leopold because you didn't want him as your attorney? A: Yes. Because I wanted my mother to bring my own. I was able to afford." CNT at 25-26.

Both Leopold and petitioner requested an adjournment for further investigation, specifically mentioning the obtaining of witnesses as grounds, TT at 2, 10. Petitioner claims that Mr. Justice Gellinoff's failure to grant the adjournment resulted in a denial of petitioner's rights to the effective assistance of counsel and to due process of law. The trial transcript, however, reveals that although the judge refused to delay the commencement of the trial, he was very willing to grant adjournments of the proceedings where necessary for counsel to complete his investigation. TT at 5, 10, 12, 30. When the trial judge in fact offered an adjournment for the purpose of locating witnesses, petitioner declined the offer. TT at 31. Given the circumstances of the case of which the judge was aware, including petitioner's tardy and incomplete disclosure of the witnesses' names, it cannot be said that the trial judge abused his discretion in refusing to grant a continuance. See Ungar v. Sarafite, 376 U.S. 575, 589 (1964); United States v. Tortora, 464 F.2d 1202, 1207 (2d Cir. 1972).

Having conducted an evidentiary hearing and ruled upon all issues in this case, this court holds that the petition for habeas corpus relief must be and is denied in all respects. Notwithstanding this result, the undersigned

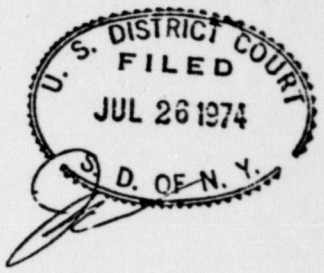
also expresses unstinting appreciation and respect for the manner in which assigned counsel for Martinez, Douglas Eakeley, Esq., of New York City, conducted the hearing and briefed the difficult issues on behalf of his client.

It is so ordered.

Dated: April 4, 1975

D. R. Taylor, Jr.
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES ex rel. FRANCISCO MARTINEZ a/k/a TONY CRUZ,

Petitioner,

- against -

WARDEN JAMES A. THOMAS,

Respondent.

74 Civ. 161 (HRT)

REPORT AND RECOMMENDATION ON HABEAS CORPUS

In October of 1966 petitioner was convicted of attempted robbery in the first degree, attempted grand larceny in the first degree, assault in the first degree and possession of dangerous weapons as a felony. He was sentenced to serve 7-1/2 to 15 years. He was paroled in March of 1972 but was later arrested on a variety of charges. While it is not stated that parole violation charges could reinvoke the unexpired portion of his sentence, respondent does not contend that the matter is moot. As a multiple offender this conviction is probably important in any event.

The petitioner appealed the judgment of conviction, but such appeal was dismissed as abandoned. Nevertheless, it is conceded by respondent that petitioner has exhausted available state remedies (see discussion of coram nobis proceedings in New York courts, hereafter).

Petitioner raises three claims:

1. that his right to counsel was violated in that he was not permitted to obtain trial counsel of his own choosing but was compelled rather to act as his own attorney with the assistance of an assigned counsel*;

* He also contends that he should have been granted an adjournment for the purposes of locating witnesses as well as to retain private counsel.

2. that the court should have committed petitioner for psychiatric examination prior to trial in order to determine his competency to stand trial;

3. that his right to direct appeal should have been reinstated because he was unable to file a notice of appeal due to obstruction by prison officials.*

While the facts are not entirely clear from the present record, it was stipulated by the respondent (in a subsequent coram nobis proceeding) that the petitioner was in various mental institutions prior to the time that he was tried on the instant crime. It would appear that he was first hospitalized in 1948 in the Wassaic Hospital when he was less than ten years old. He was apparently diagnosed to be of retarded intelligence (a moron), and found to be psychotic. He spent several years there. His other psychiatric hospitalizations are somewhat difficult to unravel from the record, but it is claimed that he was diagnosed as a psychopathic personality, schizo-type, with schizoid traits during most of his life. About a half-year after the trial and conviction in question, and indeed at the time his appeal was dismissed as abandoned, he was in Dannemora State Hospital where the foregoing diagnosis had been made. He spent a year and four months in the hospital at that time.

In an opinion given in a coram nobis proceeding

* A notice of appeal was in fact filed for petitioner on October 5, 1966. This point has not been pursued with any vigor. In view of the other conclusions, no further consideration of this point will be made.

following his conviction, a psychiatrist testified that the petitioner had been emotionally unstable all of his life, that he was impulsive, quick to make rash judgments and that he was unable to handle his own affairs judicially. While it was impossible for this expert to give an opinion concerning the petitioner's mental competency at the time of the trial in question since he did not see him until some months later, he did testify that he had suffered from a deficient mental state all of his life.

Before the case was called for trial, the defendant had had two privately-retained counsel. Why they were relieved is not indicated in the record. When the case was called for trial, petitioner had no counsel. The court then assigned Mr. Leopold to represent him. The record is unclear as to how much conversation was had between Leopold and the petitioner, or how long Leopold had to prepare the defense, but it is clear from the outset that petitioner insisted that he did not want assigned counsel representing him.

When the case was called for trial in New York County, Judge Gellinoff apparently had little or no knowledge concerning the defendant's prior background of mental deficiency or psychotic behavior and simply believed he was emotionally upset. The record is not explicit but it does not appear that the assigned counsel, Mr. Leopold, had any knowledge of these matters either. Petitioner immediately requested an adjournment of the trial in order to obtain his own counsel, and to investigate possible defense witnesses. The court indicated that it might grant a

day or two adjournment to make an investigation concerning witnesses, but was not going to allow a longer adjournment of a week or two to obtain new counsel, nor would the court allow the discharge of assigned counsel, Mr. Leopold. Judge Gellinoff apparently believed that the petitioner was using this as a not-too-uncommon excuse for avoiding trial. He made the following remarks to the petitioner*:

> "You know, you're dealing, Mr. Martinez, you're dealing with experienced people. You see, you stay there in your cell or in your cubby or in your room and you try to scheme out ways of beating the case. You try to scheme out ways of getting delays for different things.
>
> THE DEFENDANT: I had nothing to do with this. That's why--
>
> THE COURT: Wait, listen. But I want you to know that you're dealing with experts here in the Court. They are all experts. With you it's just one case. We handle thousands of such cases.
>
> THE DEFENDANT: Because mine is one doesn't mean nothing? Right?
>
> THE COURT: No. What I'm trying to bring out is that we recognize the difference. Now, you can't get away with coming in here right now and saying you don't want your lawyer. Now, stop talking. You won't get away with it. You are ordered to go to trial.
>
> THE DEFENDANT: I don't want him as my lawyer.
>
> THE COURT: It doesn't make any difference. You are goint to trial with him as your lawyer.
>
> THE DEFENDANT: I don't want him as my lawyer. That's a fact.
>
> THE COURT: Call a jury.

* Pages listed as Tr. T. are taken from the trial transcript, and pages listed as Ht. are taken from the hearing transcript.

THE DEFENDANT: I want my own lawyer. I want to get a street lawyer
(Discussion off the record at the Bench.)
THE COURT: All the Court is saying is that the jig is up, the time is here, the time is now. This man is going to trial, he's going to trial now.

MR. LEOPOLD: But if we do that, your Honor --

THE COURT: It doesn't make any difference what's going to happen later. Let the Appellate Division worry about what's going to happen later. Let the Court of Appeals, let the Appellate Division say to the Judge: 'Judge, whenever a defendant says he wants to change lawyers, it's your duty to change lawyers even though it means delay'. If they tell me that, fine, and I'll go accordingly. But right now, I'm making the law. The law is that this man must go to trial right here and now, today." (Tr. T. Page 5 - 7).

Judge Gellinoff later commented that if the case did not go to trial he would have nothing to do:

"My whole calendar was cleared. If I don't try this case I have to go out and cut out paper dolls, twiddle my thumbs, I've got nothing to do." (Tr. T. Page 11).

Needless to say, the defense counsel assigned (Mr. Leopold) was most unhappy at this unenviable position as unwanted counsel. He objected to the position that he was being put in. To this the court replied (Tr. T. Page 17):

"Forget what the law is. I'm announcing the law. You remain as co-counsel with the defendant, who is also acting pro se. It's very simple. Forget what the law is. You are in the case. You are not out of it, and you have a responsibility to help him in whatever way you possibly can, and he will continue to do whatever he in his judgment thinks is necessary to be done.".

The direction to allow petitioner to act as his own counsel did not work well. He continually irritated the court.

For example (Tr. T. Pages 43-44) the following colloquy took place:

> "THE DEFENDANT: I ain't got no rights at all. You're denying me all my rights then.
>
> THE COURT: Look, please listen to me. Don't talk about rights. The People have rights too. Do you understand? I've got to go right down the middle. I've got to take care of both sides and the rights of both sides, not only your rights. You're not running the show. You understand? You have all the rights in the world. All of your rights have been protected. They are still being protected. I'll see to it that they're protected. Now, if you go around and listen to some wise guys advising you and telling you what to do and telling you the show to put on or the act to put on, that's not going to help you, because I'm not paying any attention to it, do you understand?".

And later, (Tr. T. Page 119):

> "THE COURT: Wait, we haven't gotten to that. Now, the next question. You mentioned something about your mother and about a lawyer. Put on the record anything you want to say. You see, Mr. Martinez, don't just mumble and mutter to yourself...".

The reason for the court's agitation was quite clear: the defendant made a number of extremely improvident remarks throughout the proceedings. For example (Tr. T. page 125) the defendant stated:

> "Listen, you're not sitting in this courtroom no more. We'll see now whether you want to or not. You don't see me here no more. You don't see me here no more. You want to play your games and send me to Mattewan, then play your games. He wants to keep me here in this rat hole over here. I'm doing time on Riker's Island, and now he's keeping me here. You think it's going to make me plead guilty by keeping me in this hole?".

The defendant realized that he was making a mess of his own defense. He commented (Tr. T. Page 145):

> "I need my lawyer over here. I'm making a fool of myself in this courtroom and you know it."

Apparently, no one suggested to the court until the time of sentencing that not only was the defendant incompetent as a lawyer, but he might be mentally incompetent, also. At the time of sentencing, an attorney, Mr. Segal, appeared on behalf of the defendant and stated that he had been retained by the petitioner's mother following the conviction, that he had gone to Riker's Island to interview the petitioner and found him to be irascible. He then said to the court:

> "I do think something is wrong with this young man, something ought to be done. He doesn't know what is going on, what is happening to him at this very minute. And I was hoping your Honor might entertain an application to commit him, to see whether or not you might not be visiting an injustice upon him, because he didn't understand the nature of this whole thing". (Page 8, minutes of sentence, Ht. page 136).

The application for examination was not granted. The respondent contends that the exercise of the right to counsel is subject to the necessities of sound judicial administration. United States v. Arlen, 252 F.2d 491 (2d Cir. 1958). Since the petitioner had five months to secure counsel of his own choice, it was argued that he was using his right to counsel as a means to manipulate the orderly processes of the due administration of justice and to delay trial. If this were so, it is clear that the court's refusal to grant an adjournment would not constitute a denial of right to counsel. United States ex rel. Jackson v. Follette, 282 F.Supp. 993, 995 (S.D.N.Y. 1968), affd., 425 F.2d 257 (2d Cir. 1970). See also United States ex rel. Davis v. Mc Mann, 386 F.2d 611 (2d Cir. 1967), cert. den., 390 U.S. 958 (1968);

United States v. Llanes, 374 F.2d 712 (2d Cir. 1967); United States v. Abbamonte, 348 F.2d 700 (2d Cir. 1965), cert. den., 382 U.S. 982 (1966).

With respect to the absence of a competency hearing, the state argues, first, that such examination was discretionary under the then New York Code of Criminal Procedure, § 658, and that there was nothing before the court to suggest that the petitioner might be incompetent or incapable of understanding the charges brought against him, or of making his own defense, as required by New York's Code of Criminal Procedure § 662. Second, it contended that even where there is considerable evidence of mental instability, that a competency inquiry is not necessarily required under Pate v. Robinson, 383 U.S. 375 (1966). See United States ex rel. Roth v. Zelker, 455 F.2d 1105 (2d Cir. 1972); United States ex rel. Rizzi v. Follette, 367 F.2d 559 (2d Cir. 1966).

Both positions taken by the state, standing alone and in separate cases, would undoubtedly have merit. But when combined in a single case, they create a very disturbing situation. While it is true that the court would not usually have reason to question the competency of a defendant, unless defendant's counsel brings to the attention of the court facts giving rise to such a possibility, it is difficult to see how this can be accomplished if the defendant is representing himself. While an accused may waive his constitutional right to counsel, he must do so willingly and make a knowledgeable decision. United States ex rel. McCann v. Adams, 317 U.S. 269, 279 (1942). The questionable mental

competency of the defendant should have prohibited his representing himself. Ultimately, though a defendant may be competent to understand proceedings brought against him, and therefore stand trial, this is not to say that he is sufficiently competent to waive the right to counsel and to represent himself.

The problems inherent in this case were belatedly recognized by the New York courts. The petitioner brought a writ of error coram nobis in New York County and a hearing was held on February 13 and 14, 1969, before Judge Martinis*. The respondent argues that any error in the handling of the petitioner's trial was cured by this 1969 coram nobis inquiry into the petitioner's competency and that, since the hearing met the statutory requirements of 28 U.S.C. § 2254 (d), the findings of the court must therefore be presumed correct.

The transcript of the hearing on February 13 and 14, 1969, has been reviewed with some care. The hearing does not appear to have met the requirements of 28 U.S.C. § 2254 (d) so as to require a presumption of correctness.

Initially, it should be noted that the court considered the two questions separately and never gave any consideration to their interplay. The matter was poorly presented on behalf of the petitioner (presumably by an assigned counsel). He called only one witness, a staff psychiatrist from Dannemora. It appears that he did not prepare his witness in advance. While he stated that he had another witness to present, this witness' testimony was never heard. The medical records were poorly developed and

* Another application, made on essentially the same grounds, was denied on October of 1970 by Judge Gellinoff, relying on the findings of Judge Martinis.

are not part of the record presently before this court.*

While extensive portions of the trial before Judge Gellinoff were read into the record, Judge Martinis did not seem to be impressed by them. Indeed, he seemed to be looking for anything he could find to support the prior conviction. He participated vigorously in the examination of the psychiatrist suggesting that the petitioner's agitated mental state at trial was simply due to the tension of being on trial for a serious charge (Ht. page 61). (The court's involvement in the examination of the medical witness is particularly apparent on hearing transcript pages 61-2, 64, 66, 70-73 and 81-83.) Judge Martinis seemed particularly intent on establishing that emotional instability does not constitute incompetency for the purposes of standing trial. (Ht. page 64). When petitioner's counsel asked the witness whether or not the defendant was mentally capable of conducting his own trial, the court sustained an objection to the question (although none had been made), and commented that there was no evidence before the court of mental instability, only of "emotional instability" (Ht. 66). When confronted with the hospital records Judge Martinis replied:

> "The hospital records speak for themselves. But by the same token you do not delete from your hypothetical question nor is there any evidence in the record to show that he might have been in a period of remission during his confinement in the institution; and it certainly must be so, because he was returned to state's prison and returned to Riker's Island. So he might have been in remission during those periods, and in all probability be in remission at the time of the trial on August 12th." (Ht. page 66).

* They had been requested from the Attorney General's Office, who advised that the records were returned to Dannemora and if the Court wanted them, the Court would have to subpoena them.

The court also indicated a rather naive belief in the efficacy of the treatment of mental illness at state mental hospitals (Ht. page 70-71). The court opined that the filing of the writ of coram nobis, while committed to Dannemora, demonstrated the petitioner's mental competence (Ht. page 81). It was pointed out that the pro se application had not been prepared by the petitioner personally. (Ht. Page 81-2).

Finally, the court indicated displeasure that the proceedings were running as long as they had and that the court was compelled to stay "as late" as 4:30 in the afternoon. (Ht. page 92).

Consequently, I am compelled to conclude that the court need not presume the factual determinations made at the state coram nobis hearing to be correct, since:

1. the merits of the factual dispute concerning the capability of the petitioner to represent himself was not determined;

2. the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing since assigned counsel had not adequately prepared his witnesses;

3. the following material facts were not adequately developed at the state court hearing:
   a. the petitioner's mental competence between his release from Wassaic hospital at the age of 12 and the time of trial; and
   b. the date of onset of the petitioner's psychosis;

4. the petitioner did not receive a full, fair and adequate hearing concerning the degree of his mental impairment, and

5. a part of the state court proceedings pertinent to the determination of the sufficiency of the evidence to support such factual determination has not been produced in this court (i.e. the medical records submitted as exhibits on the coram nobis proceeding).

There is a possible additional issue. Judge Martinis, on coram nobis, believed that the claimed deprivation of counsel was not properly the subject of a writ of coram nobis. Assuming that statement to be a correct interpretation of New York laws, it would revive the issue concerning the dismissal of an appeal because of lack of prosecution at a time when the defendant was without counsel and incarcerated in a state mental hospital.

Consequently, I see no alternative except to recommend the holding of a hearing concerning the aforementioned points. I do this with full knowledge that the almost eight years which have elasped since the trial makes factual determinations extremely difficult. Indeed, these determinations were difficult five years ago when the state coram nobis hearing was held. I believe, however, that the petitioner is constitutionally entitled to a hearing under the circumstances of this case.

I recommend further that he be assigned counsel since otherwise it would be impossible to properly determine his rights. He has requested the assignment of a lawyer from the Federal Defender unit. I think, in light of the possibly lengthy and difficult proceedings envisioned herein, this is the best choice. However, the Federal Defender has, in the past, refused to take assignments on habeas corpus, on the questionable grounds that its appeals unit handles such matters, and the appeals unit has too much work to take on habeas corpus proceedings. I think that such excuse should be rejected by the court in this instance and that a Federal Defender unit attorney should be assigned to represent the petitioner.

Respectfully,

Gerard L. Goettel

Gerard L. Goettel
United States Magistrate

DATED: New York, N.Y.
June 27, 1974

RECORD FILE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. FRANCISCO MARTINEZ, a/k/a TONY CRUZ, Petitioner, vs. WARDEN JAMES A. THOMAS, Respondent.	Before: HON. HAROLD R. TYLER, JR., District Judge. 74 Civ. 161 -

New York, December 10,11, 1974

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

moments ago, at least.

Repeat that so the witness and I can hear.

Q Is there any indication in the Legal Aid file, your having reviewed it, that would indicate knowledge on the part of the Legal Aid Society, the attorneys who handled the case, that Mr. Martinez had previously been confined in mental institutions?

A I just answered quickly no. If you will give me the folder again --

MR. EAKELEY: Your Honor, the record speaks for itself. If Mr. Leopold has no personal knowledge of it I think that probably should suffice.

MR. McMURRY: I think that is for Mr. Leopold to answer.

THE COURT: I think we probably should let him check just to make sure.

A I asked to have the file back because there is handwritten insert which is not clearly photostated and I don't know what the words are. I think I can decipher them, but the best I have been able to do is make out "witness insane," and I believe -- I am just interpreting what is a very unclear photostat. I had absolutely no knowledge.

There is nothing else in the file that indicate

any question concerning the competency, the ability to understand what was going on, the ability to communicate with counsel, with the Court, to understand the nature of the proceedings, that I have been able to reconstruct in my own mind just from my memory or with the aid of any of these exhibits to indicate that, absolutely none.

Q So as far as you were aware at the time, he was lucid, coherent, responsive, seemed to understand what was going on, is that correct?

A Yes.

Q And you had no cause to ask if he had had any previous institutionalization?

A I don't recall that I did ask. Cause to ask, I suppose in any criminal matter there is always cause to ask. Whether I did ask, I don't know. I had no glaring reason to suspect it or to inquire further.

Q Mr. Leopold, I refer you to a transcript of the calendar call of June 20, 1966. That is Petitioner's Exhibit 4-I. You were not present at that time?

A That's right.

Q The petitioner was represented by one of your colleagues, Dorothy Cropper?

A Now Judge Cropper, yes.

Q Judge Cropper?

you are. But you tell me.

Are you going to be a long time on redirect?

MR. EAKELEY: I guess not. We will just conclude with Mr. Leopold then.

REDIRECT EXAMINATION

BY MR. EAKELEY:

Q Mr. Leopold, I show you Petitioner's Exhibit No. 1 in evidence, the transcript of the trial, and direct your attention to Page 5 of the sentencing minutes, which appear at the end of the hearing. I believe it's marked with a paper clip for your convenience.

A Okay, I am there.

Q I direct your attention to your statement, which reads as follows:

"MR. LEOPOLD: Perhaps that is why perhaps the best procedure at this juncture may be for him to be examined by a psychiatrist."

Do you recall making that statement to the Court in the course of petitioner's sentencing?

A Yes, having had my recollection refreshed from these minutes, I did make that statement.

Q You testified on cross-examination that you had no basis for questioning petitioner's capacity, at least as the files of the Legal Aid Society reflected.

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Upon reading that phrase can you recollect any circumstances which might have arisen during the trial and during your observation of petitioner which might have led you to make that statement to the Court that we just read?

A During the trial itself, yes, there were several outbursts of loud, emotional, and perhaps close to violent nature, I recall, by Mr. Martinez. Nothing other than that. He remained coherent, able to communicate verbally.

Q Youalso testified during the trial that you had occasion to give Mr. Martinez advice in terms of the nature of the proceedings.

A I think --

A Yes, only in so far as legal matters, not as to tactics, strategy, or anything which would or could be interpreted as my participation in the trial.

Q Is it fair to say that Mr. Martinez' questions to you revealed a certain lack of knowledge with respect to court procedure?

A Anybody who is not a trial lawyer has a certain lack of trial procedure. He seemed particularly knowledgeable, as a matter of fact, to court procedures.

THE COURT: I am sorry. I don't understand. You started off saying anybody -- I didn't get that.

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AUGUSTUS F. KINZEL, called as a witness by the petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EAKELEY:

Q Dr. Kinzel, what is your profession?

A I am a physician and a psychiatrist.

Q For how long have you been so employed?

A Since 1963.

Q Are you a private practitioner at this stage?

A Yes.

Q Do you have a specialty?

A Yes, in psychiatry.

Q Are you certified in psychiatry by the American Board of Psychiatry & Neurology?

A Yes, I am.

Q Could you briefly state with respect to your formal education the colleges and universities you attended and the degrees you received?

MR. McMURRY: Your Honor, I am willing to stipulate to the curriculum vita that has been offered.

THE COURT: You want to just mark it and put it in evidence?

MR. EAKELEY: I think we will do that in the

interests of time. I have a curriculum vita of Dr. Kinzel dated October 2, 1974, which lists his education, vocational or employment activities, his various teaching and writing projects, and I submit that Dr. Kinzel's qualifications are quite eminent. We will have this marked, with the Court's permission, Court's Exhibit C.

THE COURT: All right.

MR. EAKELEY: Following with the regular stipulations.

THE COURT: All right.

MR. EAKELEY: And I will offer it in evidence.

THE COURT: It will be deemed part of the record.

MR. EAKELEY: And offer it at this stage to the Court and request that the Court accept Dr. Kinzel as a qualified expert.

THE COURT: I don't think Mr. McMurry is contesting his qualifications. So you go right ahead.

(Court's Exhibit C was received in evidence.)

Q Dr. Kinzel, in the course of your work have you had occasions to conduct examinations of persons suffering from psychosis?

A Yes.

Q Have you previously testified as an expert

witness in Court?

A Yes.

Q On several occasions?

A Yes.

Q Dr. Kinzel, I show you a series of records which have been identified as Petitioner's Exhibits 6-A through 6-I and identified in a stipulation of exhibits as being the medical, psychological and psychiatric records of petitioner, and I ask whether you have seen those records before.

If you will look through them --

A Yes.

Q Have you in fact examined those records prior to this trial at my request?

A Yes.

Q Have you also, Dr. Kinzel, had occasion to conduct a brief examination or conference with petitioner this day?

A Yes, I have.

Q Have you also had opportunity to read portions of the trial transcript in the case of People versus Martinez, Indictment No. 999 of 1966, the entire transcript of which has been marked as Petitioner's Exhibit 1?

A Yes.

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Q Again, upon my request?

A Yes.

Q Doctor, I would like to ask you then, based upon your experience, your examination of petitioner and of his records and your reading of the transcript of his trial, are you able with any reasonable degree of certainty to form an opinion as to petitioner's mental condition in 1966?

A Yes.

Q Would you describe in your opinion what petitioner's mental condition was in 1966?

A In my opinion he was suffering from chronic schizophrenia at that time.

Q Would you describe the elements of chronic schizophrenia?

A The elements that he manifested were difficulty in functioning, that is, both in work and socially in relationships, bizarre delusions or false beliefs, auditory hallucinations, delusions of illnesses, of having illnesses that he didn't have, and a profound difficulty in trusting anyone, even those that were trying to help him.

Q Is schizophrenia to be distinguished from personality disorders?

A Yes.

Q Would you say that schizophrenia was a chronic psychosis?

A Yes.

Q How would you describe the term of art psychosis?

A It refers to a group of illnesses that share in common the characteristic of being out of touch with reality, not being able to accurately assess what is going on around one.

Q Does it follow from that that in periods of emotional stress contact with reality becomes even further attenuated, such than individual suffering from psychosis lacks the capacity to understand the consequences of his actions?

A That's correct.

Q Dr. Kinzel, I would like you to examine Petitioner's Exhibit 6-A, which has been identified in the stipulation to be records of petitioner at Wassaic State School, and I would like you to note the first page of that exhibit, petitioner's age and the clinical classification as it appears in the lower left-hand corner.

A Yes.

Q Would you read for the record the clinical classification?

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A This is in the upper left-hand corner?

Q Yes.

A "Mental deficiency undifferentiated moron."

Q Further on down that line, the age at discharge?

A 12.

Q I would like you to just look briefly at Petitioner's Exhibit 6-B, which are the records from Kings Park State Hospital. I would like you to note the diagnosis or psychiatric classification at the bottom left-hand corner of that record.

Would you read that for the record.

A "Psychosis with psychopathic personality."

Q If you will bear with me, would you turn two pages to what is headed "Psychological Consultation" on those records and would you read aloud the last paragraph beginning on the bottom of that first page and reading over to the next page, starting "Wexler Bellevue results."

A "The Wexler Bellevue results show him to be functioning within the borderline range with an IQ of 76. There is a wide discrepancy between verbal IQ, which is 63, and performance scoes, the IQ of 95, in favor of the latter, which falls in the averate level."

Q Reading on, please.

A "This pattern is consistent with that found in

adolescent psychopaths and educationally deprived individuals but in view of the extremeness of the discrepancy a serious disorder is suspect."

Q I ask you just to read one further sentence on the following page marked "Staff meeting notes, initial presentation," the last full paragraph, starting "While there are strong."

A While there are strong schizophrenic substrata it is felt that expediency (the absence of abstracts from Mount Sinai and Wassaic School) requires a tentative diagnosis of psychosis with psychopathic personality."

Q Are these excerpts that we have just read c o nsistent with your overall evaluation of petitioner as suffering or having suffered from a schizophrenic condition?

A Well, it's not uncommon for an individual to appear to have these other diagnoses, but when looked at in more depth and looked at over a period of time they turn out to have schizophrenia.

Q Would one of these indications also be the difference in performance on the intelligence quotient tests between verbal and performance?

A It's a characteristic of schizophrenia that the difference between verbal and performance scores is

often very high, much higher than could be accounted for by simple mental deficiency.

Q Does schizophrenia normally have a gestation period and sort of basic recognizable course that it takes with any given individual, starting with its onset and nding with its burning out at some later stage?

A Roughly speaking, it's a disease where onset is in adolescence and there is a sizable group where it becomes worse over a period of time.

MR. EAKELEY: Your Honor, in the interests of time, if Mr. McMurry, who has seen these records before, will consent, I would intend, rather than walk Dr. Kinzel through the records and have him give his comments on various indications that form the basis for his opinion, to offer the records into evidence at this time, let them speak for themselves. Dr. Kinzel and I have been through these. We could go through and attempt to describe Mr. Martinez' condition as it was developing over the years, but I don't think time will permit.

What I intend to do is offer the records at this time and then ask Dr. Kinzel to comment upon several outbursts of Mr. Martinez in the course of the actual trial.

THE COURT: All right. I believe that 6-A

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reversal of intent. He first asks, "Can I say anything" and then he says "I have nothing to do."

The other suggestion of schizophrenia here would be this chronic suspicion that instead of getting a fair trial he was getting railroaded out, thrown out.

Q Dr. Kinzel, based upon your examination of petitioner's records, the transcript, and of petitioner himself, was petitioner, in your opinion, capable throughout the course of his trial of making understanding, knowing and reasoning decisions of significant import?

A My opinion is that he was probably incapable of doing that because of interference by his illness.

Q Can you stace that opinion with a reasonable degree of certainty?

A Yes.

Q Would you say likewise in opinion that petitione or petitioner's reasoning capacity was substantially impaire as of the date of his trial?

A Yes.

Q Would you state this also with a reasonable degree of certainty?

A Yes.

Q Was petitioner aware, in your opinion, of the nature of the circumstances surrounding his trial and was

he capable of making his defense at all times in the course of his trial?

A My impression is that at the onset he was aware of the charges against him, that he was aware that it was a courtroom, that there was a proceeding going on involving him, but as it proceeded my impression is that his thinking was more and more interfered with by his illness, such that he became to feel it was more a kind of entrapment rather than a legal procedure.

Q If petitioner had been removed from that stressful situation of trial might it also have been possible for him to revert to a state of some lucidity?

A I have seen cases similar to this where the individual, if he is helped by his attorney, if the attorney takes over the situation, very often can maintain a minimum level of competency.

Q But if that condition of stress is maintained is it likely that the individual would return to reality, as it were?

A Probably not.

MR. EAKELEY: I have no further questions at this time.

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CROSS EXAMINATION

BY MR. McMURRY:

Q Dr. Kinzel, have you ever seen Mr. Martinez before this morning?

A No.

Q You saw him for approximately twenty minutes?

A Yes.

Q Have you previously conducted examinations regarding competency to stand trial?

A Yes.

Q Your testimony is that with a reasonable degree of certainty Mr. Martinez suffered from chronic schizophrenia at the time of this trial in 1966, is that correct?

A Yes.

Q Can you tell me on what in particular you base that opinion?

A He has a history from at least the age of 11 up until the present of medical disorganization. I think I mentioned some of the features before, the delusions, the suspicious nature he has, the auditory hallucinations, the difficulty sustaining any work activity, difficulty in sustaining any relationships, the delusions of illness, the over-interpretation of aggression from others around him. There are many, many more symptoms he has, the

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repeated suicidal feelings, including bizarre attempts to harm himself, swallowing razor blades, almost jumping out windows, and so on.

Q Is it a characteristic of schizophrenia that it waxes and wanes, there are periods when it's in remission and there are periods when it's active?

A It can be.

Q Could you say with any degree of certainty that that was the case in Mr. Martinez' case?

A My impression is that he has been chronically schizophrenic and rather severely so, that he has not had a relapsing kind of -- type of the illness. I think he has had the illness with him pretty much since he was 11 years old.

Q The fact that a person has been diagnosed as chronic schizophrenic, does this indicate that he was necessarily incompetent to stand trial?

A No.

Q Does it indicate necessarily that he was incapable of making his own defense, participating with counsel, discussing rationally the proceedings facing him, and so forth?

A No.

Q As a man of science, do you ever have doubts

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about your diagnoses?

A Yes.

Q Would your doubts be increased by the fact that your diagnosis in this case refers to a condition eight years prior to, approximately, today?

A Yes, the degree of time obviously from the time we are concerned about, the longer it is in the past, the more difficult it is to say with certainty that such and such exists. We do have indications on records of his illness prior and post. I feel with reasonable medical certainty I can say it existed at the time.

Q Notwithstanding the fact that eight years have passed by? I am sorry. Because of the wind I didn't hear --

A Yes. My impression is that the records and his statements are sufficient so that I can say that with reasonable certainty even though it is that long ago.

14 Q Would you be able to say with reasonable degree of certainty today that Mr. Martinez was not competent to stand trial in 1966?

A Yes.

Q You would say that he was not?

A My opinion is that he was not competent to conduct his own defense. As I said before, I have seen

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cases such as this where if the attorney takes over and if he is supported and corrective of some of the reality misconceptions they do tend to diminish. My impression is it was that situation of becoming responsible for his own defense that may have been the stress -- that may have been the thing he was incompetent to do.

Q To conduct his own defense?

A Yes.

Q But would you say that he was incompetent to stand trial?

A I would say that he was probably marginally competent to stand trial in the sense that he knew the charges against him and he did start to make an attempt to cooperate with his counsel.

Q Is your opinion, Doctor, based solely on the medical records you have examined and the trial transcript?

A And his --

Q And the interview you conducted?

A His own statements about it, yes.

Q Does your opinion take into account the fact that the record does not indicate anywhere that his attorney or any of the people dealing with him mentioned anything to the Court about difficulties in communicating with Mr. Martinez?

MR. EAKELEY: Can we have the question repeated, please.

MR. McMURRY: I will withdraw it.

Q Can you say with a reasonable degree of certainty sir, that Mr. Martinez understood what was going on, what the proceedings were all about?

A Yes. At least he seemed to have a superficial understanding that it was a c ourt, why he was there, why he was being tried.

Q Would you consider the possibility that Mr. Martinez was then capable of feigning the conditions you have described?

A Well, I considered the possibility when I was speaking to him, but my impression is that he does quite the opposite, he tends to minimize the degree of illness he actually has.

One of the reasons I asked to speak to him alone was I felt he might be able to reveal a little more to me about his illness, which he did.

Q Doctor, I show you a psychiatric report from Clinton Prison dated September 28, 1968, a petitioner's exhibit.

A Yes.

Q I refer you to the part --

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THE COURT: Is that 6-I in evidence?

MR. McMURRY: 6-I.

Q I refer you to the second paragraph, which begins "He gives the story that he fabricated mental illness to get into the State Hospital because he heard that it was an easy bit."

Does the opinion you have given us today take into account this report?

A I don't recall seeing this report. My impression from seeing other men like him is that if there was any pretending it was -- if he said he was lying or feigning it was after the fact, when he felt a little bit better he probably said, "Oh, I just lied to get in here."

That's the more common situation.

Q To the same effect, Doctor, I show you an excerpt from Petitioner's Exhibit 6-G, that portion dated September 18, 1968, progress note, signed by one Dr. Gorlicki. I am referring particularly to that part which indicates as follows;

"He indicates today that he has simulated in prison mental symptoms because of dissatisfaction and frustrations of not having been represented by a good lawyer and for having received a harsh

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sentence. I wanted to come here because I hear it is a good place."

A Where are you reading?

Q Right here.

A Yes.

Your question is how would I evaluate that?

Q My question is do the opinions you have given us previously take this into account as well.

A No, it did not.

Q Would this change your opinion in any way?

A No.

Q With respect to petititioner's intelligence quotient, how valid is a test given at an early age in ascertaining the person's intelligence quotient at a much later age?

MR. EAKELEY: Objection, your Honor. I am attempting to understand the question.

THE COURT: I think the witness is sharing the same problem. Why don't you rephrase that.

Q You testified that Mr. Martinez was classified as an undifferentiated moron in Wassaic State School in 1952, I believe, is that correct?

A Yes.

Q Of what significance would that be in determin-

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ing Mr. Martinez' intelligence quotient in 1966, at the time of the trial?

A Well, I don't -- you cannot predict from an earlier IQ a later IQ. Is that what you mean?

Q That is what I am trying to get at.

A Right. No, you cannot.

Q Have you formed an opinion --

A One's IQ can rise over time or lower.

Q In this case have you formed an opinion as to whether Mr. Martinez' IQ rose over time from that time to 1966?

A Yes. My opinion from looking at the charts and talking to him is that his IQ is higher than that but that basically it hasn't changed much since about 16 or 17.

Q Hasn't changed since?

A It hasn't changed much since that time.

Q Would you have an opinion as to what it was in 1966 based On your review of the records?

A It was in the dull normal area.

Q Which is?

A 80 to 100.

MR. McMURRY: I don't believe I have any further questions, your Honor.

THE COURT: Any redirect?

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MR. EAKELEY: I have a couple of questions, your Honor.

REDIRECT EXAMINATION

BY MR. EAKELEY:

Q Mr. McMurry asked you whether you had had occasion to see this unfortunately somewhat bulky record. I would like to return to Petitioner's Exhibit 6-G and I would like to ask you to read the third page thereof aloud, if you would, starting with the date of the text.

A "May 29, 1967. Inmate was interviewed today at HBC with the help of an interpreter. He appeared depressed and untidy. He did not know his name and his age. He stated that he couldn't sleep last night because the cell was closing in on him. He heard voices telling him that he murdered someone and that he is to be electrocuted."

He again stated that his deceased mother appeared in his cell and comforted him. At the end of the interview inmate set fire to his mattress and when asked for the reason he claimed that the bugs there were annoying him.

"It is felt that the inmate is acutely psychotic and potentially dangerous to himself and others. He should be hospitalized immediately."

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Q Dr. Kinzel, do you recall reviewing that item, at least, from the record before?

A Yes.

Q In your opinion, are the observations which you have just read into the record capable of being feigned, as Mr. McMurry said, to a trained psychiatrist with any degree of likely success?

A My opinion is that they are not capable of being feigned with any likely success to a trained psychiatrist.

Q Mr. McMurry asked you what Petitioner's IQ was likely to have been as of the date of trial. I wanted to show you Petitioner's Exhibit 6-E, which are the records of Bellevue Psychiatric Hospital for petitioner, and I would like you to look at the fifth page of that chart, I would like you to note the date of the record, although that date may be different, but the date at least indicates February of 1964, os that correct?

A Yes.

Q Would you read to us the intelligence quotient scores as they appear at the top of that list.

A The full scale IQ is 90. That's broken into verbal of 81, performance of 101. There is the discrepancy again between the verbal and performance. The

comment is dull normal to average.

Q Would you explain the significance of that discrepancy again to us?

A Again, it's not diagnostic but it's characteristic of schizophrenia.

Q Would you say that the differences in the test quotients reflect a sort of mental confusion on the part of petitioner and the disorientation that you have testified is chronic with petitioner?

A My impression is that is what is causing the discrepancy, yes.

Q I would like to call your attention to the last paragraph of the second page of that Bellevue test in February of 1964. I would like you to read that to the record.

A "A psychotic character disorder is indicated with marked sociopathic trends. It is felt that when under duress he might act out quite irresponsibly."

Q Is that diagnosis consistent with your opinion of petitioner as of 1966?

A I think the sociopathic trends are minimal here and I think what is much more prominent is the psychotic. My opinion would differ in that I think he is much more psychotic than he is sociopathic.

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MR. EAKELEY: No further questions.

THE COURT: Thank you, Doctor, very much. You may be excused, sir.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: 2 o'clock.

(Luncheon recess.)

- -

order to get a prisoner down. So that that was another assistance to him.

THE COURT: Yes. What I right or is there something else?

MR. McMURRY: I was going to ask that question, your Honor. I believe that is all the questions I have.

THE COURT: All right.

MR. McMURRY: Your witness.

THE WITNESS: I think the record will show that there are -- the record will reflect that there must have been conversations or conferences between Mr. Leopold and --

THE COURT: Leopold was here himself this morning as a witness. He said that.

THE WITNESS: Yes, because the record will indicate that at times Mr. Leopold to protect himself was protesting, "Now, Judge, that's his decision, not mine," or things to that effect.

THE COURT: Right.

Mr. Eakeley.

CROSS EXAMINATION

BY MR. EAKELEY:

Q Your Honor, you testified that it had been brought to your attention that petitioner had had two privately retained counsel prior to the appointment of the

Legal Aid Society on his behalf, is that correct?

A Yes.

Q You also testified, did you not, that there was a request made before you on the morning of August 4, 1966 for a subsequent adjournment and through colloquy with defendant you determined that the reason adduced for the adjournment was to obtain witnesses, is that also correct?

A That's essentially correct.

Q Isn't it also the case that throughout the trial petitioner repeatedly requested an adjournment so that he could obtain private counsel of his own choosing?

A Yes, he kept on protesting that he wanted his witnesses and they can only get them through private counsel and there is no question about his wanting his own counsel or stating that.

Q Do you also recollect that at the outset of the trial on August 4, 1966 Mr. Leopold, who was the Legal Aid Society lawyer, represented to you that he was unprepared to go forward with the trial as well?

A Yes, yes. My recollection is that he had said he was not the man in charge of this case or that there were others. But I looked upon them as a unit.

Q Mr. Leopold --

A He is part of the Legal Aid Society and they

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have a lot of lawyers who have records of their interviews and I think at some point in the proceeding he divulged to me that they had made an effort to locate these witnesses and had been unable to ascertain their identity. That was at the early stage, practically at the beginning.

Q Did Mr. Leopold also tell you at the beginning of commencement of trial that he had made an application in a prior part for an adjournment of two weeks or so to prepare the case?

A I don't recall, but he probably did. He was very vehement, gentlemanly and respectful, but forceful in requesting that he be relieved and that the defendant be given an adjournment for the purpose of getting hiw own lawyer. He kept on doing it consistently.

Q Just to focus on Mr. Leopold's own state of unpreparedness for the moment, if we may, did you make any inquiries of Mr. Leopold as to the reasons for his lack of preparedness on the date of trial prior to assigning him to sit by petitioner during Petitioner's trial?

A No, I didn't -- I didn't assign him to the case. He came into the case representing him. I didn't just pick him out and say "Now, Mr. Leopold, please represent this man." He came in as part of the staff of the Legal Aid Society with a file in his hand.

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Q I think you also testified --

A And while he said or may have said that he is unprepared or unfamiliar, that's only an assigned reason, it's not the real reason, because every one of them is prepared. Of course, if witnesses have to be rounded up that's a different story. But I was willing to afford him an opportunity to get those witnesses.

Q Did Mr. Leopold tell you he had just come back from vacation and had only interviewed petitioner on two occasions?

A I don't recall. I don't specifically recall it, but it's possible that he did.

Q Mr. Justice Gellinoff, you also testofoed as to your mental process which led you to the conclusion that petitioner in seeking to request counsel of his own choosing was attempting to delay the trial, is that correct?

A That's correct.

Q I return to you Respondent's Exhibit B, which, as you testified, is the clerk's sheet for cases, and I ask you is that the document that you had before you, or a copy thereof, on the date of trial.

A It was part -- it's usually annexed to the indictment, but at the time I began calling for the selection of the jury I didn't look at this. I never

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read this. It's not part of my preparation for the trial.

Q In other words, you did not read the contents of respondent's Exhibit B?

A Definitely not.

Q You were aware, nevertheless, that there had been several adjournments in the case prior to its being brought on to your trial part?

A Yes, a number of adjournments, and that he had two private lawyers before whom he had discharged.

Q Did you have any information with respect to the date of discharge or the reasons for discharge of these two lawyers?

A No. I didn't go into the merits. My impression was here is a defendant who is stalling.

Q Did you have any other documents before you at the time that you formed this impression?

A I don't recall any. I had the indictment, and these papers, which are Respondent's B, must have been part of the papers that were submitted to me, they must have been annexed to the indictment.

Q But there is no indication on Respondent's Exhibit B as to whether the State or the defense requested the various adjournments that appear on that docket sheet?

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A I don't see any. As a rule, in those days they didn't make such notations. I think lately they do because we are compelled to bring a defendant to trial within six months.

I also notice that they don't have any notations as to the various lawyers having been discharged, but they don't enter a lawyer until he actually files a notice of appearance. It's the practice for a lawyer to come up and appear before him and hope to be retained or wait until he is paid or see whether or not he can get along with the defendant or whether the defendant can get along with him, and so the clerk only records the appearance of a lawyer by annexing a written notice of appearance to these minutes. Whether he actually also endorses on these sheets the fact that a notice of appearance has been filed I don't know.

Q Were you also aware as of August 4, 1966 or do you recall whether you were aware that defendant had been incarcerated at Rikers Island House of Detention for Men since June of 1966?

A I knew that he had been incarcerated for some time. Exactly how long I didn't know. But I knew he had been incarcerated, and that was another reason for wanting to push this case for a disposition.

Q You testified that it had come to your attention that defendant on the day of trial wanted to seek an adjournment to obtain counsel, private counsel, and that he no longer wanted the officers of the Legal Aid Society, is that correct?

A That's correct.

Q Did you make any inquiry with respect to the reasons petitioner might have had for making the request on the day of trial?

A Impulsively and initially I don't think I did, but as the conversation went along that developed.

Q Which conversation are you referring to, your Honor? Is this the initial conversation with --

A At the very beginning, when I was forcing him to go to trial.

Counselor, it's not unusual --

Q I realize that.

A I want to make the record complete. It's not uncommon for a defendant to say, "I don't want my lawyer, I want to get another lawyer." That happens very, very frequently.. That's a good way to get the case postponed.

Q But you made no connection in your own mind as you were describing your mental processes to us a while

ago between Mr. Leopold's stated unpreparedness and defendant's decision no longer to continue with his representation?

A I don't ascribe Mr. Leopold's statements to any cooperation with the defendant. If Mf. Leopold stated he was unprepared I believed him. But that was no excuse for me either because Mr. Leopold could get prepared inside of ten minutews. He would have at his command the entire file. And in fact he had it.

Q By the entire what do you mean?

A The record of interviews with all witnesses, record of conversations with the defendant, record of what the defendant's defense was, if any. He had every there was to be known about that case other than these theoretical new witnesses.

Q In other words, you were assuming at the time that the Legal Aid Society had conducted its usual full investigation of the matter?

MR. McMURRY: Objection, youe Honor.

A Absolutely.

MR. EAKELEY: Justice Gellinoff has given us --

A Whatever investigation they make, and they do a very, very fine job, very thorough, and if there had been anything specific suggested to me by Mr. Leopold it would

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FOLEY SQUARE NEW YORK N.Y. CO 7-4580

have been considered.

Q But you made no --

A But there is nothing specific other than "Well, I am not prepared," or words to that effect.

Q And you made no attempt to follow that up?

A No, particularly since the case came to me from another part, where all these questions had already been disposed of.

Q By disposed of you mean transferred to your trial part?

A No. These questions had already been considered and it came to my part for trial.

Q You see, your Honor, if you will just bear with me, I am trying to understand what it was specifically in the form of hard data or information that you had before you other than the fact that the case had been assigned out of an assignment part to a trial part, you had docket sheet and you had certain representations made to you the day of trial by the Assistant District Attorney, Mr. McGinley, counsel for defendant, Mr. Leopold, and defendant himself. If I appear only to be groping for the answer it's just because I don't know what else you had before you and I am just attempting to flush it out, if I may.

A I think you are stating it correctly. All

CURRICULUM VITAE

October 2,1974

Augustus F. Kinzel,M.D.

B.A.,Magna Cum Laude,Yale University (1958)
M.D.,University of Pennsylvania School of Medicine (1962)
Internship in Medicine,Boston City Hospital (1962-1963)
Residency in Psychiatry, Columbia Presbyterian-N.Y. State Psychiatric Institute (1963-1966)
Chief Resident in Psychiatry (1966)
Certified in Psychiatry, American Board of Psychiatry and Neurology (1970)
Certificate in Psychoanalysis,Psychoanalytic Clinic For Training and Research,Columbia University (1972)

Staff Psychiatrist,U.S.Medical Center For Federal Prisoners, Springfield,Mo. (Active Duty,U.S.Public Health Service) (1966-1968)
Career Teacher Award (N.I.M.H.),Dept. of Psychiatry,Columbia University (1968-1969)
Co-Instructor:"Psychoanalysis and the Law" (seminar) and Co-Lecturer:"Psychiatry & the Law" (lecture course) both at Columbia Law School
Co-Instructor: Course in Psychotherapy,State Hospital Resident Program
Resident supervision using videotape techniques
Assistant Attending Psychiatrist,Washington Heights Community Service,N.Y.State Psychiatric Institute (1969-1970) - full time resident teaching,supervision,etc.

Instructor,Dept. of Psychiatry,College of Physicians & Surgeons, Columbia University (1968-present)
Instructor-Third year med. student course-Presbyterian Hospital (1970-1971)
Instructor-First & second year med. student course-N.Y. State Psychiatric Institute (1971 - present)
Instructor-Psychiatry & the Law (CSP P6212)-Div. of Community and Social Psychiatry,Dept. of Psychiatry & School of Public Health (1973-present)
Lecturer-Forensic Psychiatry in Post Graduate Course in Psychiatry & State Hospital Course in Psychiatry at N.Y.State Psychiatric Institute (1973-present)
Coordinator - Dept. of Psychiatry & N.Y.C. Dept of Corrections (1972-present)

Publications:
Kinzel,A.F.:"Body-buffer zone in violent prisoners",Am. J. Psychiat. 127:1 July ,1970
Kinzel,A.F.:"Violent behavior in prisons",in Dynamics of Violence,ed. by Jan Fawcett,M.D.,American Medical Association,Chicago,Ill. 1971,pp.157-164
Kinzel,A.F.:"A Clinical View of Violence",Med.Insight, 4:8 August 1972,New York (Insight Publishing Co.)
Kinzel,A.F.:"Impersonal Sex",Human Sexuality (in press)
Kinzel,A.F."Abnormalities of personal space in violent prisoners" in Experimental Behavior,ed. by J.H,Cullen 1974,Irish University Press,Dublin Ireland
Kinzel,A.F.:"The psychodynamics of fear",submitted for

pub. to Am.J. of Psychiat.

Kinzel,A.F.:"Violent People-Who,Why,and What Can Be Done?" (Manuscript submitted for publication)

Kinzel,A.F.:"Textbook of Psychiatry & the Law" (In writing- under contract with Charles C. Thomas, Springfield,Ill.)

Professional activities:

American Psychiatric Association - N.Y.District Branch
Chairman:Committee on Prisons

American Academy of Psychiatry & the Law
Chairman: Task Force on the Right to Treatment

Expert witness:

U.S.District Court-Southern District,Eastern District
On the emotionally destructive effects of imprisonment (1973,1974)

N.Y.C. Board of Corrections (1974)-essentials for adequate psychiatric care of prisoners

Hearings on abuses of the public by unlicensed psychotherapists (Atty Gen.,N.Y.State)(1972),as representative of Dept. of Psychiatry,Columbia University

Presentation of research on violent behavior:

Dept. of Biometrics,N.Y.State Psychiatric Institute (1970)
St. Luke's Hospital - Grand rounds (1970)
- Dept. of Child Psychiatry (1973)
N.Y.State Psych. Inst - Residents Rounds (1970)
Symposium on Experimental Behavior - Medical Research Council of Ireland Galway,Ireland (1972)
"Sunrise Semester",CBS Television (educational program) (1974)

Special presentation:

Dept. of Psychiatry,Columbia Univ.-Grand Rounds on "Malingering" (1973)

Private practice (1970-present)

Psychiatry
Psychoanalysis
Forensic Psychiatry

Augustus F. Kinzel,M.D.
166 E. 75th St.
New York,N.Y. 10021

Ind. No. 999/66

PET.

1

SUPREME COURT : BOROUGH OF MANHATTAN

----------x

THE PEOPLE OF THE STATE OF NEW YORK :

-against- : Trial

FRANCISCO MARTINEZ, :

Defendant :

----------x

New York, N.Y., August 4, 1966

(On indictment for Attempted Robbery 1st Degree)

B e f o r e :

HON. ABRAHAM J. GELLINOFF, Justice,

and a Jury.

A p p e a r a n c e s :

For the People:

FRANK S. HOGAN, ESQ.
District Attorney, N. Y. County
By: PATRICK W. McGINLEY, ESQ.
Assistant District Attorney

For the Defendant:

Defendant acts as his own counsel.

(Edward Leopold, Esq., of the office of Anthony F. Marra, Esq., sits alongside the defendant.)

FILED

APR 10 1967

SUPREME COURT
NEW YORK COUNTY
APPEAL BUREAU

Anne Feller, C.S.R.
Official Court Reporter

7344 K

TO:
CLERK OF COURT OF NEW YORK
LAW LIBRARY
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New York, N. Y. 10013 17th Floor

THE CLERK: Francisco Martinez.

MR. McGINLEY: The People are ready.

MR. LEOPOLD: Your Honor, my original intention was to ask for an adjournment of a few weeks this morning and that the matter be referred back to 30 to make the application there. Yesterday I informed Judge Brust I was not ready, and I asked to be adjourned to that part. It was transferred to this part. Certain representations were made by Mr. Nadjari at that time as to what my office's reply was the last time this matter was on the calendar, and I subsequently found out from the lawyer in the court at that time that what was said is not so. Mr. Adler, the attorney who was in court on August 1st, is in 30 now, so I feel perhaps if you refer the matter back there we could make that explanation before Judge Brust. That was my original intention. My purpose for asking for the adjournment is to continue my investigation and to conclude it. It wasn't until yesterday that Mr. Martinez gave me the names, and only the first names, no addresses, of two witnesses who could be vital to the defense of this case, and I feel that certainly the obligation I owe to him requires me to pursue all efforts to obtain those witnesses. I have other leads which could have connected me to them.

THE COURT: What is the nature --

MR. LEOPOLD: This morning he tells me he doesn't want me to represent him at all so I feel that with his advice to me that he intends to retain other counsel. Adrian perhaps he can address Your Honor directly to clarify that matter.

THE COURT: First of all, what is this case about? Let me see what I'm dealing with.

(Mr. Leopold and Mr. McGinley approach the bench and confer with the Court.)

THE COURT: Put everything on the record. All right, now, I'll hear the District Attorney.

MR. McGINLEY: Your Honor, Legal Aid speaks about the obligation they owe to the defendant. The People feel they owe him one too, the only obligation being for a speedy trial. The defendant was indicted in March of 1966. The People are ready for trial at this time. The defendant's motion to dismiss by counsel can only be construed as a dilatory tactic now that the time has come for the jury to appear. Finally, any motions or arguments made were made before Mr. Justice Brust. He must have heard all these arguments and denied them and sent this case here to trial. I submit this is not the place for an application for an adjournment, and the People are ready to proceed at this time.

THE COURT: Mr. Leopold, there are two facets to your application -- three facets. Let's dispose of the least important first, the one pertaining to what Mr. Adler allegedly said to Mr. Nadjari or whatever alleged representations were made with respect to being ready for trial. They're unimportant. There may have been a misunderstanding. In any event, this Court pays absolutely no attention to that phase of it, whether he said he'd be ready.

MR. LEOPOLD: I'm --

THE COURT: Don't interrupt. I'm going to rule. I'll make a direction.

MR. LEOPOLD: I'm sorry.

THE COURT: But as a matter of courtesy to you, I'm giving you my rationale. That's unimportant. The point is we have a case. We have to dispose of it, and we have to dispose of it according to law, according to due process and with due regard for the rights of the accused, with due regard to every reasonable opportunity for him to make his defense, which leads us to the second aspect of your statement, namely, that he has given you the names of two people, the first names, and you haven't completed your investigation and you want to do so because you may have them as part of your defense. All I can say, in answer to

that, is that it certainly comes at a very late stage in the proceedings now -- when I say you I don't mean you personally. I mean your client, to urge that as a ground for an adjournment. What the Court will do will be to proceed with the case and if it becomes necessary, the Court will give you a reasonable adjourment for a day or two to make your investigation. In the meanwhile you can institute your investigation at once, or have your associates do it. Now, as to the third request, his request to discharge you, the Court looks with disfavor on that. You know you're dealing, Mr. Martinez, you're dealing with experienced people. You see you stay there in your cell or in your cubby or in your room and you try to scheme out ways of beating the case. You try to scheme out ways of getting delays for different things.

THE DEFENDANT: I had nothing to do with this. That's why --

THE COURT: Wait, listen. But I want you to know that you're dealing with experts here in the court. They're all experts. With you it's just one case. We handle thousands of such cases.

THE DEFENDANT: Because mine is one doesn't mean nothing, right?

THE COURT: No, what I'm trying to bring out is

that we recognize the difference. Now, you can't get away with coming in here right now and saying you don't want your lawyer. Now, stop talking. You won't get away with it. You are ordered to go to trial. [illegible]

THE DEFENDANT: I don't want him as my lawyer.

THE COURT: It doesn't make any difference. You are going to trial with him as your lawyer.

THE DEFENDANT: I don't want him as my lawyer. That's a fact.

THE COURT: Call a jury.

THE DEFENDANT: I want my own lawyer. I want to get a street lawyer.

MR. LEOPOLD: Your Honor, could I add some information? Originally my office did not represent Mr. Martinez. He had other counsel. He retained counsel. It wasn't until some time later, I believe after the indictment, that we came into the picture.

COURT CLERK: You're the third counselor, counselor.

MR. LEOPOLD: I think that speaks clearly that any delays should not be attributed to counsel now, counsel who will be required to go to trial, accounting for inaccurate and incomplete investigation.

THE COURT: I understand, Mr. Leopold. No one

is reflecting upon your representation of this defendant or upon your services. All the Court is saying is that the jig is up. The time is here. The time is now. This man is going to trial. He's going to trial now.

MR. LEOPOLD: But if we do that, Your Honor --

THE COURT: It doesn't make any difference. What's going to happen later let the Appellate Court worry about what's going to happen later. Let the Court of Appeals, let the Appellate Division say to the Judge, "Judge, whenever a defendant says he wants to change lawyers it's your duty to change lawyers even though it means delay." If they tell me that, fine, and I'll go accordingly, but right now I'm making the law. The law is that this man must go to trial right here and now, today.

MR. LEOPOLD: Your Honor, what I'm addressing myself to is the preparation of the case. The case was transferred here ostensibly with both sides agreeing that each was ready.

THE COURT: So far as the preparation of the case is concerned, get one of your associates immediately out into the field to make their investigation.

MR. LEOPOLD: Before the case was transferred into the trial part I stated that I was not ready to go to trial the next day.

THE COURT: Mr. Leopold, I am not going to rehash what's happened. We have a system here. We're trying to clear the calendars, and if the Appellate Division or the Court of Appeals or the United States Supreme Court wants to reverse a conviction, should there be one, let them do it. I won't. I'll give this man no adjournment except to see that every right he has under the law is protected and afforded, but right now he's going to trial with one of the finest lawyers representing him that money can buy.

THE DEFENDANT: I don't want him as my lawyer. I want my own lawyer, a street lawyer. Do you want to send me to jail? Do you want me to cop out to the indictment? Do you want me to plead guilty to something?

THE COURT: I don't want you to cop a plea. I don't want you to go to jail.

THE DEFENDANT: Why not get this case over a month ago, two months ago, why?

THE COURT: There's no sense in talking to you, because if I try and you keep on talking back and you're not listening then when I try to help you and you don't let me then there's no use. All right, bring a jury down. Mr. Leopold, you are going to trial. You have the Court's direction --

THE DEFENDANT: I don't want him as my lawyer.

THE COURT: You have the Court's direction to represent him.

MR. LEOPOLD: Well, I accept the Court's direction. I must accept it.

THE COURT: All right, let's go ahead. Get a jury, and let's go to trial.

(Mr. McGinley and Mr. Leopold approach the bench and confer with the Court.)

(Case later recalled.)

COURT CLERK: People against Francisco Martinez.

(Appearances: Mr. McGinley, Mr. Leopold and the defendant.)

MR. McGINLEY: If Your Honor please, I move for trial the case of the People of the State of New York against Francisco Martinez, Indictment Number 999 of 1966. The People are ready.

MR. LEOPOLD: May we approach the bench, Your Honor?

(Mr. McGinley and Mr. Leopold approach the bench and confer with the Court.)

(The following occurred at the bench in the presence of the Court, Mr. McGinley, Mr. Leopold and the defendant:)

THE COURT: Put on the record anything that you

want to put on the record to protect your rights.

THE DEFENDANT: Listen, Your Honor, all these people that was in this party that night, if you give me a week or so, I will get these people.

THE COURT: I'll tell you what we'll do. We'll give you a chance to get these people. If necessary, I will postpone the case for a few days. In the meanwhile, your lawyers can start working, getting these people. It will take a day or two to pick the jury. Then it will take three or four days for them to present all the technical evidence and by that time a week will pass by, and in the meanwhile they can work on it and get these people.

THE DEFENDANT: I want my own private lawyer. My mother is going to get my own lawyer.

THE COURT: Mr. Martinez, you've made that clear that you want your private lawyer. You've made that clear. I understand but it's too late for me to consider that. Just listen to me. There are two sides to every story. I've got a job to do. We've got prisoners waiting to be tried. Some of them are guilty. There may be some that are innocent. So far as you're concerned, I don't know whether you're guilty. I don't know whether you're innocent. So far as I am concerned, you're innocent because you start off being innocent, and I'm going to tell that to the jury, as

you will hear. Now, we have a whole system. We have calendars. We have a whole procedure. My hands are tied. I cannot at this point recognize your request to have your own lawyer. That should have been done weeks ago, months ago and you see what it looks like is that at the last minute, in order to avoid going to trial, you're grasping at some straw --

THE DEFENDANT: I'm not trying to avoid going to trial.

THE COURT: I know. That's what it looks like, you see. Now, I cannot recognize it. I'm the kind of a fellow who'd like to give you every conceivable break imaginable and I do whatever I can, but I still have a job to do. After all, I've got to uphold the law. I've got to do my job. This case was set for today. My whole calendar was cleared. If I don't try this case, I have to go and cut out paper dolls, twiddle my thumbs. I've got nothing to do.

THE DEFENDANT: All I ask is for a week or two, Your Honor, so I could have my lawyer in and I could have my witnesses in.

THE COURT: My friend, listen to me. It's just too late to make that request.

THE DEFENDANT: In that case, I'd like to

represent my own self.

THE COURT: If you want to represent yourself, it's perfectly agreeable to me. I'll help you and, as a matter of fact, let Mr. Leopold sit with you, you know, to help you, to give you ideas, to tell you and represent yourself. It's perfectly okay. Let him make objections to protect things that you don't know about. When it comes to asking questions I'll let you ask questions. I'll let you do whatever you want. I'll let you represent yourself. That request I will allow.

THE DEFENDANT: You won't give me a chance to get my witnesses together?

THE COURT: Yes, I will give you a chance to get your witnesses together. We'll have Mr. Leopold's office -- you give him the names, the addresses and he will send out investigators and get them, and if it becomes necessary, I'll adjourn the case for a day or two for the witnesses. I'll give you every chance imaginable, but let's get this over with. You're either guilty or innocent. You'll hear when we start picking a jury. All right, sir, the understanding is you'll represent yourself. Mr. Leopold will help you, and give him the names and he'll send out - his investigators to locate the witnesses, and I put on the record that if it becomes necessary --

THE DEFENDANT: But I don't want Mr. Leopold for my lawyer. That's what I'm trying to say.

THE COURT: But you're going to represent yourself.

THE DEFENDANT: Right.

THE COURT: And he will just help you in case you want him. Whatever you want him to do, he will do.

THE DEFENDANT: I want my own lawyer to get my witnesses through my mother.

THE COURT: He will get your witnesses. He will send for your mother right away. Your mother will be here. I'll give you a chance to talk to your mother, and your mother will go out and get the witnesses and bring them here; and I will give you a chance to talk to the witnesses privately. I will let you talk to the witnesses privately, you alone, without a lawyer, without anybody. What can be fairer than that, since you want to represent yourself. I'll let you talk to them all alone.

THE DEFENDANT: I don't think it's fair because I won't be able to get -- I was in a party. I was there with some friends --

THE COURT: Look, my friend, I know you don't think it's fair and you've said so so many times, but I have to make a decision and that's the decision I have to

make. We're going to go ahead. You will have an opportunity number one, to have your mother here. You will have an opportunity to have your mother go out and get these witnesses and bring them here. You have an opportunity to confer with these witnesses in private. I will give you a private room. You can talk to them alone, without Mr. Leopold or without anybody.

THE DEFENDANT: I don't have to talk to them alone. I'll talk to them anyplace, just --

THE COURT: And, in addition to that, you can give Mr. Leopold the names so he can send his investigators out to bring them in and you can represent yourself and Mr. Leopold will help you, so let's go ahead.

MR. LEOPOLD: Your Honor, I'd like to understand to help him on legal matters --

THE COURT: Yes, help him in whatever way you can. If you see he's making a fool of himself, don't embarrass him, naturally, but tell him --

MR. LEOPOLD: Am I to respond to his inquiries?

THE COURT: Yes, do whatever you can. Yes, forget the relationship. Here's an unfortunate man. He's facing trial with a serious charge. He's fighting. Naturally, you can't hate him for that. You can understand. It's human nature. He's fighting desperately with every

means at his command so, overlook everything and help him. Act as though he were sick. When I say "sick," I don't mean mentally or physically sick, but act as though he is emotionally upset and he is grasping at a straw and he is fighting and help him and I will help him.

MR. LEOPOLD: Well, I just want to be certain of my -- I have no qualm against Mr. Martinez, but having elected to represent himself, am I relieved as counsel?

THE COURT: No, you're not relieved as counsel.

MR. LEOPOLD: I'm to stay here to serve as a guide to him if he requests my legal aid?

THE COURT: That's correct. He represents himself and you're to help him and stay throughout the trial as though you were still counsel.

MR. LEOPOLD: Well, I'm concerned with things like voir dire, questions --

THE COURT: Well, you handle these things yourself at the beginning. You handle these things yourself because these technical things he wouldn't know himself. When he represents himself, he'll represent himself when it comes to witnesses. He can represent himself whenever he wants or whatever he wants.

MR. LEOPOLD: Sir, my understanding is he wants to represent himself. He will be the attorney in this case,

-and he conducts all phases of it including --

THE COURT: Mr. Leopold, let's not split hairs. Let's go ahead. Let him do what he wants and whenever you see that something has to be done that he isn't doing, you do it.

MR. LEOPOLD: Then I'm not being counsel. He's being counsel and at times there will be an overlap.

THE COURT: You are both counsel. He's representing himself, and you could be co-counsel with him. Don't relieve yourself of any liability. You do whatever you have to do.

MR. LEOPOLD: He has seen fit to elect to relieve me of that obligation. I think the law is clear in this matter.

THE COURT: He has not relieved you of any obligation, Mr. Leopold. The Court is imposing an obligation on you, and let's not complicate this thing by technicalities. He is going to defend himself. You will help him. You will remain in the case as his lawyer, although he bears the brunt and bears the primary responsibility and will be permitted to participate in whatever way he sees fit.

MR. LEOPOLD: Your Honor, I think that the law is clear that with --

THE COURT: Forget what the law is. I am announcing the law. You remain as co-counsel with the defendant, who is also acting pro se. It's very simple. Forget what the law is. You are in the case. You're not out of it and you have a responsibility to help him in whatever way you possibly can and he will continue to do whatever he, in his judgment, thinks is necessary to be done.

MR. LEOPOLD: Am I to understand then that when Mr. Martinez tells me to do something I must do it, and when he tells me not to do something I must not do it?

THE COURT: Oh, stop, Mr. Leopold. Such situations won't arise. Confer with him the way you do with any co-counsel.

MR. LEOPOLD: Well, I have experienced situations in cases --

THE COURT: Forget what you've experienced. If you have any difficulty, you will confer with me and I'll solve the difficulty for you.

MR. LEOPOLD: Well, my difficulty is right at the start.

THE COURT: The difficulty is right at the start -- you participate in the voir dire. If he feels that he wants something else, he will tell you.

MR. LEOPOLD: Is Your Honor directing me to conduct the voir dire even though Mr. Martinez has relieved me as counsel?

THE COURT: He has not relieved you as counsel. The Court has assigned you as counsel --

THE DEFENDANT: But I don't want him.

THE COURT: You remain with him whether he wants you or not.

MR. LEOPOLD: Your Honor, this is my point. I see clearly that I should, as Your Honor has directed, sit right next to him and answer any inquiry he has on a legal matter because he has said I elect -- I, Franciso Martinez, elect to be my own lawyer. You, Mr. Leopold, are here to guide me, if I want you, but I don't want you to --

THE COURT: Oh, don't put it on that kind of a technical basis. We will proceed with the trial. He will represent himself. You be here. You will follow my directions, and I will instruct you. Let's proceed.

(The following occurred in open court:)

COURT CLERK: Is defendant ready to proceed?

MR. LEOPOLD: Well, subject to conversation at the bench, defendant is ready to proceed.

COURT CLERK: All right, at this time the defendant is advised if he intends to challenge an

him ask questions or both of you can ask questions.

(Mr. Leopold confers with the defendant.)

MR. LEOPOLD: May I approach the bench, Your Honor?

THE COURT: Yes, come up.

(Mr. McGinley, Mr. Leopold and the defendant approach the bench. The following occurred at the bench:)

MR. LEOPOLD: Again, at this juncture, Your Honor, Mr. Martinez tells me he doesn't want me to say anything to anybody. He wants to get his own lawyer.

THE COURT: All right, okay. Now, do you want to ask any questions of these jurors?

THE DEFENDANT: This is the first time in my life I've ever been before the Supreme Court. I don't know what to ask.

THE COURT: All right, then, Mr. Leopold, then you ask whatever questions you deem necessary.

MR. LEOPOLD: Well, Your Honor, the problem here --

THE COURT: I know the problem, Mr. Leopold. Do as the Court says. Ask whatever questions you deem necessary. Let's not go over this thing. We've gone over it, and the Court has made a ruling and let's proceed. Your record is protected. You put your position on. He's

put his position on, and don't keep on repeating it.

MR. LEOPOLD: I can't help it because --

THE COURT: Well, we must proceed.

MR. LEOPOLD: Your Honor is directing me to ask questions?

THE COURT: I'm not directing you to ask questions. I'm directing you to act as a lawyer. You, as a lawyer, use your judgment as to what questions should be asked, and then consult with the defendant.

THE DEFENDANT: I want my own lawyer to do this.

THE COURT: You've said that to me. Please proceed.

THE DEFENDANT: I don't want him to do this. I want to get my own lawyer to do this for me. I don't want him to do nothing.

THE COURT: Mr. Martinez, please do not repeat this over and over again. You've told me you want to represent yourself. You're representing yourself. Now, in addition to representing yourself, I am instructing Mr. Leopold to help you. Now, step back.

MR. LEOPOLD: Your Honor, I will ask no questions of the jury.

THE COURT: You don't want to ask any questions, is that it?

MR. McGINLEY: Satisfactory to the People.

COURT CLERK: Satisfactory to the defendant?

THE DEFENDANT: Yes, sir.

(At 2:50 P.M. one additional juror was duly impaneled and sworn, making a total of three jurors.)

THE COURT: How many challenges have been exercised?

COURT CLERK: Eight and eleven.

THE COURT: Mr. Martinez, under the law, as you know, you can only in this case have twenty peremptory challenges.

THE DEFENDANT: Yes, I know.

THE COURT: You've already exercised eleven. The District Attorney has exercised eight.

MR. LEOPOLD: May I approach the bench again, Your Honor, to make a statement for the record?

(Mr. McGinley, Mr. Leopold and the defendant approach the bench. The following occurred at the bench:)

MR. LEOPOLD: Again, Your Honor, I want the record to indicate that in exercising the challenges the judgments have been made completely by Mr. Martinez, and I played no part in selecting any juror.

THE COURT: That's perfectly okay. Look, Mr. Martinez, Mr. Leopold said before that you didn't want

to give him the name and address of your mother. If you give it to me in confidence, I will see to it that your mother is brought here to talk to you. Maybe you'd want finish tomorrow or finish Monday and that. I'll be happy to do everything I can as a judge to get your mother here.

THE DEFENDANT: See, this is what it is, since she didn't come to visit me in Rikers Island or write me or anything like that. Now, if she doesn't want to come so I don't want, in other words, have a judge have her come to see me, because then she wouldn't come because she wants to see me or talk to me. She'd come because you say so.

THE COURT: Yes, but we want to get the names. I want to. Listen to me. Let me explain something to you. I don't know whether you're guilty. I don't know whether you're innocent. I assume you're innocent. I only want the truth to be developed, and I would be happy personally to arrange to have any people brought here whom you tell me in confidence that you want brought here, and I'll arrange to have them see you. You don't have to do it this minute. Think it over overnight and tomorrow morning if you say to me, "Judge, I'd like you to get so and so," I'll make every effort to get them for you. I'm sure Mr. Leopold --

THE DEFENDANT: Could this go until Tuesday?

THE COURT: Don't you see? We won't get

Wednesday or Thursday.

THE DEFENDANT: It's not that I have a target of Tuesday. I was asking for an adjournment --

THE COURT: What can't you do from jail that you could do on the outside?

THE DEFENDANT: Write people.

THE COURT: You've had ample time to do it.

THE DEFENDANT: Your Honor, I'd like to have the papers of this guy Matthew, that night when they brought him to Bellevue Hospital, the record that they found on him when you notified the policeman and the detective and Washington to come to court. In other words, if they be together, I can't prove nothing. What I mean, if one of them gets on the stand for the other two not to be close to each other. I could prove it is a settlement between the three of them, because the policeman knows me very well --

THE COURT: What is it you want me to do for you?

THE DEFENDANT: When they come to court not to bring the three of them at one time to court. When one of them takes the stand I want them to go outside the courtroom.

THE COURT: When a witness testifies all other witnesses will be excluded from the courtroom. No witness will hear what the other witnesses testify to.

THE DEFENDANT: See, if this Washington and this

patrolman get to sit together in the courtroom, they're going to get a story together, Your Honor.

THE COURT: My friend, listen to me. The witnesses will not be allowed in the courtroom while testimony is taken in the case. In other words, the policeman will not be in the courtroom while Washington is testifying. Washington will not be in the courtroom while the policeman is testifying until after he has testified. Once a witness has testified then he can sit in the courtroom. I will protect your rights in that respect. All right, now, you'll get that other witness lined up. All right, bring in the jury.

(The following occurred in open court:)

(The jury entered the courtroom.)

COURT CLERK: People against Francisco Martinez. Defendant is present, counsel assigned to assist him is present and the District Attorney is present.

(Court Clerk calls roll of four jurors and each answers.)

(Talesmen were further examined on the voir dire by Mr. McGinley to determine their qualifications to serve as fair and impartial jurors.)

THE COURT: You see we can't be the law unto ourselves. A lot of things I do I personally disagree with,

anything.

COURT CLERK: No, Your Honor.

(The following occurred in open court.)

(The sworn jurors enter the courtroom.)

COURT CLERK: And may it please Your Honor, Francisco Martinez on trial. The sworn jurors will please answer as their names are called.

(Court Clerk calls roll of eight jurors and each answers.)

COURT CLERK: And Your Honor at this time directs the jury box be filled?

THE COURT: Yes.

MR. LEOPOLD: May we approach the bench, Your Honor?

THE COURT: What is it you wish to say. We can't keep on interrupting the proceedings. Is it anything that can't be said in open court?

MR. LEOPOLD: I think it should not be, Your Honor.

THE COURT: You think it can't be said in open court?

MR. LEOPOLD: I think not, Your Honor.

(The following occurred at the bench in the presence of the Court, Mr. McGinley, Mr. Leopold and the

defendant:)

THE DEFENDANT: Every time -- before the jury is being picked I see that thing going around.

THE COURT: I can't hear you.

THE DEFENDANT: When they're picking a jury that thing is going around all the time. Now they're just picking them out like that. Why is that?

THE COURT: Mr. Kelly.

COURT CLERK: Yes, Your Honor.

THE COURT: What's your problem?

THE DEFENDANT: The problem is every time when I was picking a jury, every time they pulled some names out of that box they turned that box around. Now they're not turning that box around.

THE COURT: He says you're not turning the box around.

COURT CLERK: Well, Your Honor, the selection of this jury began -- the entries in the Clerk's minute book was last --

THE COURT: Friday.

MR. McGINLEY: Thursday.

COURT CLERK: The ballots were in the wheel when I came into this part of the court at approximately 9:30. I, for the first time now, have touched any of those

ballots. If the defendant, Your Honor, directs, I'll spin the wheel. Is that your application?

THE DEFENDANT: Yes.

THE COURT: All right, spin it.

COURT CLERK: Yes, Your Honor.

(The following occurred in open court:)

THE COURT: This could have been done in open court. Every time you want to talk to me doesn't mean you have to approach the bench.

(Talesmen were further examined on the voir dire by Mr. McGinley to determine their qualifications to serve as fair and impartial jurors.)

MR. McGINLEY: No challenges for cause, Your Honor.

THE COURT: All right, now, Mr. Martinez, you understand you've exhausted all your statutory challenges and can only challenge for cause. So go right ahead and ask any questions if you want to --

THE DEFENDANT: No, sir.

THE COURT: You have no challenge for cause then.

(One prospective juror was challenged peremptorily by the People.)

COURT CLERK: Has the defendant any challenges for cause?

currency. About this time Ptl. Richard Henderson, assigned to the 23rd Precinct, was patrolling his beat. As he came within view of this gas station, a very well lighted area, the defendant, Francisco Martinez, saw Ptl. Henderson approaching and he, together with his two companions, left out the door and ran without having taken the money from Robert Washington. Ptl. Henderson gave chase and caught one of the men, Rasulo, Rasulo having dropped a knife in the gas station just before he ran. The defendant Martinez was not apprehended until February 15th of the year 1966.

The People will ask you to keep you minds open during the course of the presentation of the evidence, and after hearing the Judge's charge to retire to the jury room and after deliberation to find this defendant guilty as charged. Thank you.

THE COURT: All right, Mr. Martinez.

COURT CLERK: Will Mr. Leopold advise the defendant.

THE COURT: Keep your voice up so that I can hear.

THE DEFENDANT: Ladies and Gentlemen of the Jury, all I want to say is that -- what's his name?

MR. McGINLEY: Rasulo.

THE DEFENDANT: Rasulo, he was beaten by this

police officer. He was forced to say that I was with him. That's why he's in Matteawan State Hospital right now for the beating they gave this man because he refused to tell the officer who was the other fellows who was with him. That's what happened that night. Now, if they give me the rights, the complete rights in this court, I think I can prove this to you. It was all a setup between the policeman, the detectives and this Robert Washington who framed me up here. That's all.

COURT CLERK: Your first witness, Mr. McGinley.

MR. McGINLEY: If Your Honor please, the People's first witness is a police photographer who had pictures taken of the scene so that the jury can follow with clarity and precision. And, I must inform the Court that that particular police officer cannot be here until 12 o'clock and, accordingly, I must ask the Court for a short continuance until that time.

THE COURT: Do you want a recess until 12 o'clock?

MR. McGINLEY: Yes, Your Honor, if we might.

THE COURT: Will he be here at twelve?

MR. McGINLEY: I was informed by telephone on Friday that he would be here at twelve noon. I'm optimistic that he'll be here at twelve.

and then there are three arrow marks, One is the direction in which he says Martinez went, that's marked with an "M," the other one where the other fellow went, practically across the street, according to the witness, which is marked with a "A" and then another one which goes in the direction of the "X," which is marked with a "R," which he says is the direction where Rasulo went. Mr. McGinley, do you have anything further with this witness?

MR. McGINLEY: Possibly one or two questions. That's all.

THE COURT: Could you come back this afternoon, Officer?

THE WITNESS: Yes, sir.

THE COURT: Mr. Martinez, may I make this suggestion. Supposing we take a recess now and you think over -- it will give you a little time to prepare the things you want to ask him.

THE DEFENDANT: Yes, Your Honor, but the officer here and the complainant, they're together there and they got to talk over there something. I'm going to be guilty before I even get a chance to say a word.

THE COURT: Do you want to finish with him now? All right.

BY THE DEFENDANT (Continuing):

Q You say when you was approaching the gas station you see Indio and myself approaching 103rd Street, right, according to the mark you made on the picture? A How is that now?

Q You show over here I supposed to be running this way, right, where the "M" is. A Yes, that's right.

Q Indio is supposed to be running this way.

A Across First Avenue.

Q And this other guy is coming straight to you, right, because if you're staying here as you say --

A That's when I first saw you. Now, where that "X" is, that's where you looked in my direction. Now, when he came out the gas station, when he passed me I wasn't standing there, because I continued walking toward you.

Q In other words, you were trying to hide --

A No, I'm coming in to capture you at the time, because I know you see me but by the time I get there you three split up, you see, so I go after the man closest to me, which is Rasulo.

Q You got a gun. You got a six-shooter, and you could stop the three of us, right, and yet you let the two of us go and you go after this guy and forget about everything else? A I'm one man.

Q You got the six in your gun and yourself. That's seven, right? You let these two guys go and you just

concentrate on this one man? A The reason --

Q For instance, if you see these two guys fighting --

A You see, I'm an officer. I know the danger of firing a weapon. See, there are apartment houses over there. Now, if I fired at you, more than likely I would probably hit you, but there's a chance of missing you and hitting someone innocent in the apartment house.

Q But I'm asking you to answer the question. You said there were no cars around and it's 4:30 in the morning, like you say, yet you're afraid of hitting somebody?

A There are apartment houses over there. Let me show you the apartment houses.

Q There are projects there too? A There's a project here and people are sleeping.

Q You're afraid you might wake up the people if you start shooting or something, that's what it is? A No, it isn't.

Q Isn't it a fact that this Rasulo was fighting with Washington because an affair was going on between Rasulo's wife and Washington, and he went there because he had a personal grudge against this Washington, and you got there and these other two guys ran and that's when you took Rasulo and beat him? And when you had him there you took him to my house and he didn't have clothes. He had shorts

and you beat him in front of my wife? A I did what?

Q You and another officer took him to my house. You and another officer took him to my house and beat him, and you made him tell I was there. When I came home that morning 7:30 my wife told me about it. A I saw you myself. We didn't do nothing like that. I identified you myself. I know you from that area. I can't miss you.

Q From where you know me? A From the distance.

Q You just told the District Attorney -- A Your name, no.

Q You didn't say that before what you told the District Attorney was you couldn't recall seeing me before? A Before that time, no.

Q But yet you positive you know me very well. That's what you say now. A I recognize you.

Q Yet you didn't beat this man with some other officers in front of my wife to make him say I was there, because he refused to tell you who the other two fellows were? A That never happened.

Q Anyway what you did after you locked up Rasulo? A What happened?

Q What happened then? A What happened when?

Q What you did about myself and this other guy, Indio? A I don't understand your question.

Q You arrested one, right? A Right.

Q Now, what you did about the other two? A In a case like that the other two were turned over to the detective. Now he has snapshots of you. Actually Washington knew you from the beginning. He told us where you lived. That's why we went to your house looking for you, you see. Evidently you didn't get there at the time.

Q How come you didn't come to arrest me the next day or the following day? A Because you were never home. The detectives were the ones --

Q I lived there twenty-seven years. I never leave that neighborhood. Every policeman in that neighborhood knew my family. You have my picture. You could have gone to my mother's house only a block away. A I don't know your mother.

Q You say it was turned over to the detectives. They know my family. We've been living in that neighborhood for about twenty-two, twenty-three years, and it took you two months later to come and arrest me? A I didn't arrest you. I didn't pick you up. The detective picked you up.

Q You went to the precinct, right, and you say you looked at me? You didn't even know what to say and when you seen my wife you say, "Yes, that's the man." You didn't

say nothing until you see my wife come to the precinct. You was with her in the house about two or three hours, waiting to see if I arrived, then you remember her when you see her come to the precinct, then you say, "That's him."

A No, that didn't happen either. We were at your house about fifteen minutes. That was the morning of the 30th.

Q Fifteen minutes -- you took Rasulo to my house. He had no clothes on -- A Rasulo never went to your house, because he was in the car.

REDIRECT EXAMINATION BY MR. McGINLEY:

Q You placed Rasulo under arrest, did you?

A Yes, sir, I did.

Q And this defendant Martinez was not arrested until February 15th of the year 1966, is that correct?

A That is correct, sir.

Q How long did you wait at this defendant's home on the morning of December 30th? A About fifteen minutes we were there.

Q Was the defendant home at the time? A No, he wasn't.

Q Did you ever see him again after that? A The night -- when Sullivan picked him up.

Q You mean Det. O'Sullivan? A Right.

Q Were there any cars in the area of the gas station

THE DEFENDANT: People that was here before from the jury are sitting there.

THE COURT: That's nothing -- the jury is out. Go ahead. Continue.

COURT CLERK: Francisco Martinez, do you admit the allegation contained in the information filed against you on March 4, 1966? Speak up that His Honor and the stenographer may hear your reply.

THE DEFENDANT: I don't admit to nothing. You do what you want to do. Say what you want to say.

THE COURT: Well, look, Mr. Martinez, if you don't admit it, then we have to --

THE DEFENDANT: Let him go ahead then, that's all right.

THE COURT: We'll have to call in the jury and we'll have to prove that you were previously convicted of a crime. Is that what you want done?

THE DEFENDANT: It doesn't make no difference any more. You see, the way -- you force me to go to trial. I'm on trial so --

THE COURT: Mr. Martinez, don't say, "Let's go on with this. All right." This isn't playing games. You have certain rights, and the Court is trying to see that your rights are preserved. I've explained to you that the

information has been read to you. The information accuses you of having previously been convicted of a crime.

THE DEFENDANT: I asked you before for some time to get a lawyer, because my mother is sick. This detective's mother dropped dead. We could wait a year, right? Me, I can't get no time to get a lawyer, so I can tell my mother, talk to her, tell her what to do.

THE COURT: Mr. Martinez, one thing at a time. Let's start from the beginning. Just keep your mind on what I'm saying. We'll talk about your mother and about your getting a lawyer later, one thing at a time. Right now I explained it to you that you are being charged with the possession of a dangerous weapon as a felony. I've explained to you that the basis of the charge, that the possession of a dangerous weapon as a felony is your having previously been convicted of a crime. I've explained to you that it's incumbent on the District Attorney to prove that prior crime. I've explained to you that if the District Attorney proves it, the jury will know it. I've explained to you that you can prevent the jury from knowing it by admitting that you were previously convicted of a crime, by explaining to you that if you admit that you were previously convicted of a crime, the jury won't know that you were previously convicted of a crime. The Clerk has

read the information to you, and he has asked you do you admit the allegation of the District Attorney that you were convicted of this crime as alleged in the information. Now, that's all there is to it. Do you admit it or don't you?

THE DEFENDANT: Yes, I do.

THE COURT: You do, all right. That's fine. Then it's not necessary to mention anything further about it, and it's not necessary to tell the jury about it; and it's not necessary to make a big to do about it. Mr. Clerk, the defendant admits that he was previously convicted of the crime -- what is the crime alleged?

COURT CLERK: The crime was possessing a dangerous weapon -- assault in the third degree, Your Honor, was duly by law convicted of the crime of assault in the third degree and judgment was duly imposed upon the said named defendant, Francisco Martinez, on August 7, 1963, before Your Honor's associate, Justice James M. Carney.

THE COURT: All right, you admit that; is that correct?

THE DEFENDANT: Yes.

THE COURT: All right, then, that makes it unnecessary for you to make any reference to it whatsoever and that settles that.

COURT CLERK: With Your Honor's permission, may

counsel and the defendant approach the bench?

THE COURT: What for?

COURT CLERK: With regard to an application, Your Honor. The People, I believe, are resting -- Mr. McGinley?

THE COURT: Come up here and tell me what's on your mind.

COURT CLERK: Does Your Honor wish this on the record?

THE COURT: Tell me.

(Court Clerk Kelly approaches the bench.)

COURT CLERK: The District Attorney doesn't have the officer who actually booked the defendant until Wednesday. Rather than inconvenience the Court and this defendant -- produce this defendant every day from Rikers Island -- and the defendant, Your Honor, personally consented -- he is going to make an application that this trial be adjourned until Wednesday morning.

THE COURT: Wait. We haven't gotten to that. Now, the next question. You mentioned something about your mother and about a lawyer. Put on the record anything you want to say. You see, Mr. Martinez, don't just mumble and mutter to yourself. Whatever you say I want on the record, see, so that if anybody reviews this case, they'll know what

it is you said, so if you have any rights I want to give you those rights. I want to be sure that the record shows that I'm giving you these rights. Now, what is it you want to say? Anything you want to say, say.

THE DEFENDANT: All I want is enough time for my mother to get well and come over here so I could talk to her, and she'll know what's going on and she can bring a lawyer here. Then I'll stand a chance.

THE COURT: Mr. Martinez, we went all through that. This is the third lawyer you've had. We've tried to get your mother here. Your mother just doesn't want to come here.

THE DEFENDANT: What am I supposed to do, take a lawyer that wants me to plead guilty to something?

THE COURT: No, we don't want you to take a lawyer that wants you to plead guilty. We want you to take a lawyer who will fight for you.

THE DEFENDANT: That's what I want.

THE COURT: And the lawyer is willing to fight for you, and you are fighting for yourself. You don't have to prove that you're innocent. The State must prove that you're guilty, and that's what they're doing. If they prove you're guilty, then it means that you're guilty. That's all there is to it. Now, let's not go through this business

can't, we'll postpone this till Wednesday until you do. In the meanwhile, Mr. Leopold, if there's anything that can be done about getting his mother here, his sister here or any witnesses here or anybody else, fine. He's lost nothing by our proceeding with the case, absolutely nothing. He knows the whole People's case, and I'm still not forcing him on, and you have until Wednesday for your defense. All this time he's had ample opportunity to get any witnesses. Now, Wednesday morning we'll proceed with his defense, because I don't know whether he will want to testify first or have the witness testify first. I just don't know. In any event, if you can possibly get the detective by tomorrow, get him.

MR. McGINLEY: I'll make every effort, Your Honor.

COURT CLERK: Bring in the jury?

THE COURT: Yes. Now, I want him kept here.

THE DEFENDANT: Your Honor, what do you want to do that for? Your Honor -- listen, you make -- what are you trying to do to me?

THE COURT: Now, stop, Mr. Martinez.

THE DEFENDANT: I'm doing time on Rikers Island now. They want me to stay here -- I'm set up over there.

THE COURT: Mr. Martinez, this Court --

THE DEFENDANT: Never mind the Court. I'm trying

to prove something and you're not letting me. You're using psychology left and right, baby talking to me.

COURT CLERK: He's to be kept here --

I'm doing THE COURT: Yes, you want to put me in this

THE DEFENDANT: Listen, you're not sitting in this courtroom no more. We'll see now whether you want to or not, you don't see me here no more. You don't see me here no more. You want to play your games and send me to Matteawan and play your games. He wants to keep me here in this rat hole over here. I'm doing time on Rikers Island, and now he's keeping me here. You think it's going to make me plead guilty by keeping me in this hole?

THE COURT: I wouldn't accept your plea of guilty. I wouldn't permit you to plead guilty.

THE DEFENDANT: What do you want to keep me here? I got all my stuff on Rikers Island. I've been doing good there. I've been coming here for the last six months. Now all of a sudden you want to keep me here.

THE COURT: I want to find out if you're guilty or innocent.

THE DEFENDANT: I don't even know what to say. Sometimes I get up and say anything that gets in my mind, and now you want to keep me here too, huh?

THE COURT: Tomorrow morning.

THE DEFENDANT: It's not going to be tomorrow morning unless you get twenty officers to break my neck and bring me out here. I want to go back to Rikers Island. I'm doing good over there. Now you want to put me in this hole over here.

THE COURT: Tomorrow morning.

THE DEFENDANT: It's not going to be tomorrow morning, Your Honor.

COURT CLERK: Well, if I may most respectfully address Your Honor? This jury has been admonished by the Court when Your Honor declared the luncheon recess. Does Your Honor direct the jury to be summoned to appear or they be advised --

THE COURT: I want the jury here when I adjourn court. I want the defendant herewhen I adjourn court.

COURT CLERK: Yes, Your Honor. Bring in the jury.

(The jury entered the courtroom.)

COURT CLERK: And may it please Your Honor, Francisco Martinez on trial. Ladies and Gentlemen of the Jury, please answer as your names are called.

(Court Clerk calls roll of fourteen jurors and each answers.)

THE COURT: Members of the Jury, the People have

won't have another opportunity to ask him any more questions. Any questions that you want to ask him, you ask him now, and if you want to later on call him as a witness on your behalf, he will be your witness and not the District Attorney's witness. And that means that any answers that he will give to your questions from now on, you will be bound by. That's what that means. All right, you may sit down now and you have no more questions now, is that it?

THE DEFENDANT: If I call him for my witness, I can ask him questions, right?

THE COURT: If you want to call him as a witness, you can ask him questions as your witness. Now, do you want to call him as a witness? I'll have him remain here. Do you want to call him as a witness?

THE DEFENDANT: Yes.

THE COURT: All right, Officer. Remain here.

MR. McGINLEY: That, Your Honor, is the People's case.

THE COURT: All of you step up here.

(The following occurred at the bench in the presence of the Court, Mr. McGinley, Mr. Leopold and the defendant:)

THE COURT: On behalf of the defendant the Court moves on his behalf to dismiss each and every count of the

indictment on the ground that the People have failed to make out a prima facie case as a matter of fact and as a matter of law. Now, I've moved to dismiss the indictment on your behalf. What, if anything, would you like to say in addition to what I am going to think about on your behalf?

THE DEFENDANT: Sir, what do you mean by "dismiss the indictment"?

THE COURT: Throw the case out.

THE DEFENDANT: Do I have anything to say about that?

THE COURT: Yes.

THE DEFENDANT: I have nothing to say about that.

THE COURT: Is there anything else you want to tell me about the case, any argument you want to make, any reasons you want to give?

THE DEFENDANT: You mean throwing the case out? You mean it's all over?

THE COURT: Throw it out -- throw the case out.

THE DEFENDANT: I'm through with this now?

THE COURT: Yes.

THE DEFENDANT: I got nothing to say.

THE COURT: All right, motion denied and the Court enters an exception on behalf of the defendant. All right, you can step back.

THE COURT: Sure.

THE DEFENDANT: I spoke to my mother. This lawyer, who is willing to represent me, has another case in another part this morning. Could we adjourn this for a while?

THE COURT: Mr. Martinez, I cannot adjourn it for any lawyer or anybody else. You must proceed.

THE DEFENDANT: But I need this lawyer, Your Honor.

THE COURT: Mr. Martinez, will you listen. I'm making a ruling. I cannot argue this more. There's no further opportunity for argument. The case is on trial. You are now ready to call your witnesses for the defense. You have four witnesses available. You have the police officer. You have the detective. You have Mr. Rasulo -- was it three or four?

MR. McGINLEY: Washington, Your Honor.

THE COURT: And Washington. They're all here ready to be called.

THE DEFENDANT: My mother told me this morning she'd have a lawyer.

THE COURT: I'm not interested in your having a lawyer other than the lawyer now sitting alongside of you.

THE DEFENDANT: But he's not my lawyer. I need

my own lawyer.

THE COURT: Mr. Martinez, kindly proceed with your defense. Call your next witness. If you won't call them, I'll call them. Who do you want to call first?

THE DEFENDANT: I need my lawyer over here. I'm making a fool of myself in this courtroom, and you know it.

THE COURT: Mr. Martinez, please stop talking about a lawyer.

THE DEFENDANT: I don't know nothing about law, Your Honor, and you know this. I need my own lawyer before we finish this case. I've been trying to get one before we started the case.

THE COURT: Now, stop talking about a lawyer, and answer my questions. Which of these four witnesses do you want called first? They are all here.

THE DEFENDANT: I refuse to say anything, Your Honor.

THE COURT: You refuse to say anything? All right, bring in the first one, Mr. Washington.

THE DEFENDANT: He doesn't give me a chance to get my lawyer. He's forcing me to go to trial.

DEFENDANT'S MOTHER: Could I say something?

THE COURT: Please sit down.

(Court Clerk calls roll of fourteen jurors and each answers.)

COURT CLERK: Francisco Martinez, do you at this time, with His Honor's permission, desire to personally address the jury?

THE DEFENDANT: Yes, sir.

THE COURT: All right, Members of the Jury, as I indicated to you yesterday, we are approaching the close of this trial. That means that both sides have the right to address you and to reason with you and to try to convince you. But, as I indicated yesterday, it is your sworn duty to decide this case solely, solely on the evidence and on the law as the Court will give it to you in it's charge. By the evidence we mean exhibits and we mean statements made under oath. All right, let's proceed. Try to speak loudly so that we can all hear you, and take as long as you want, and don't rush yourself.

THE DEFENDANT: Thank you for your time and patience during this trial. I would like to say that this man has come from Matteawan. That's supposed to be -- I'm sorry. The man accused me of robbing the gas station. Now, the other man, Matthew, claims I wasn't there, which I wasn't and this man is supposed to be insane, according to doctors. I don't really think that he is and I don't really

think that you people think he is, because you see the way he talked. He didn't look nervous and I believe that this man brought the policemen to my house because he was beaten to do this and, as you could see, there was two other persons with him.

Now, this one officer has let two men go. Don't pay the first one no mind and just keep talking to Matthew. Now, is it possible that he could have give the policemen the other fellow's address, could have bring them to the other guy's house? Yet he picked my house. Why? Because he was scared. The man was being beaten by the police. He's afraid they might kill him like he said. Myself, if this man here get up now and start beating me I tell them anything. If I see they going to kill me, I pick the first door, the first person that opened the door. I say, "That's him" to escape.

You see, the policeman, he say he was fifty feet away from the place, and he see myself and two others approach the gas station. He saw with his eyes the knife was pulled out, but yet he don't approach the gas station. He has tried to hide, to scheme his way around without thinking somebody might get killed. Maybe he was waiting for it in order to act. He's got a gun on his side. Yet he don't shoot at the man because he's afraid he might wake

up the people at 4:30 in the morning. It has nothing to do with the people. It's a matter of somebody getting robbed. Somebody could have gotten killed in there. He doesn't know this. But yet Matthews -- Robert Washington say that the police officer got there but we was gone already, that he opened the door for the police officer, and then he told him what happened. And after he told him what happened, that's when he started running after Rasulo. But yet the police officer said that no, he was ten feet away from Rasulo when he passed by running. Then he ran after him and after he catch him then he came back to the gas station and find out what happened.

You could see this is a set-up all the way around. Robert Washington, I believe it's got to be that he's saying this story here because he's afraid he'll lose his job. He won't be able to get another job, because the police officer might make him lose his job if he comes over here and says the truth.

Now, these two other men with him, what has the D.A. done about this? Nothing. He just don't pay no mind. Just because the man say it was me, it had to be me. The next day the man comes to court. He tells his Legal Aid to tell the judge the truth. Yet there was no chance, not even for the Legal Aid to talk. The case was adjourned. Before

he knew it the man was in Matteawan. So now he got his chance to talk and tell the truth, because he knows over here he can't get beat by nobody. You could see that man ~~himself there. He didn't have no fear then.~~ He knew nobody was going to hurt him. He spoke very well, that he brought the police over to my house because he wanted to take this pressure off him. Maybe he was scared to bring them to these other two fellows' house. He have heard about me. He had seen me. So he figure if he brings them to my house, they stop beating him. Now, like I said before, this supposed to be a court of justice. What the D.A. have done about these other two fellows? As a matter of fact, the man is on the stand. He doesn't even question the man about these other two fellows. He doesn't even ask him where do they live. He made no kind of effort about it and nobody else. The only thing is this one man under pressure say it was me. That's all that counts.

That's all. Thank you.

COURT CLERK: Yes, Mr. McGinley.

MR. McGINLEY: May it please the Court, Mr. Foreman and Ladies and Gentlemen of the Jury, at the outset I thank you also for the courtesy and attention that you've given to us throughout this trial. It's been a fairly short trial, and I'm sure that most of the evidence is fresh

Martinez guilty of the crime of an attempt to commit the crime of robbery in the first degree, the first count of the indictment, guilty of the crime of an attempt to commit the crime of grand larceny in the first degree, the second count of the indictment, guilty of the crime of assault in the second degree, the third count of the indictment and guilty of the crime of possessing a dangerous weapon as a felony, the fourth count of the indictment, and so say you all. Your Honor directs the sworn pedigree of this defendant be taken?

THE COURT: Yes.

THE DEFENDANT: Is that necessary? I'm guilty, so what do you want? I refuse to answer any questions, right?

THE COURT: Listen, Mr. Martinez, under the law --

THE DEFENDANT: Under the law you're rushing the people. YYou're scaring the people half to death. You didn't even give them a chance to hear what the lady was reading.

THE COURT: Listen to me. Under the law --

THE DEFENDANT: Under the law I have no rights in this courtroom. I was forced from the beginning to going to trial.

THE COURT: Mr. Martinez --

MR. McGINLEY: Your Honor --

THE COURT: Wait. Don't interrupt the Court when the Court is addressing you. Under the law the Clerk of the Court is required to ask you these questions. Now, do you refuse to answer the questions?

THE DEFENDANT: Yes, I refuse to answer the questions.

THE COURT: All right, the defendant stands mute.

COURT CLERK: October 6th for sentence, Your Honor?

THE COURT: No, we'll make it October 4th, and the defendant is remanded. I just want to say to you before you're taken back the Court tried to cooperate with you in every way, gave you every consideration.

THE DEFENDANT: No, you didn't. You know it. You even showed it the way you talked to the jury before.

THE COURT: It let you see your mother every time you wanted to.

THE DEFENDANT: I should kiss your feet for that because you let me see my mother.

THE COURT: Having all the court officers make special arrangements -- all right, Mr. Martinez, you could

In.d 299-66

SUPREME COURT STATE OF NEW YORK

COUNTY OF NEWYORK PART 32

THE PEOPLE OF THE STATE OF NEW YORK

-against- SEntence

FRANCISCO MARTINEZ

New YOrk, N.Y., October 4, 1966

BEFORE:

HON. ABRAHAM J.GELLINOFF, J.S.C.

APPEARANCES:

For the People: Lawrence A. Leff, Esq.,
John A. Chatfield, Esq.
Assistant District Attorneys.

For the Defendant: A. F. Marra, Esq.,
Legal Aid Society
by: Edward Leopold, Esq.,
of counsel.
and Sam Seqal, Esq.

THE CLERK: Francisco Martinez, in prison.

Are you Francisco Martinez?

THE DEFENDANT: I am.

THE CLERK: Doyou have a lawyer?

THE DEFENDANT: No, sir.

THE CLERK: Do you want the Court to assign a lawyer

to you?

THE DEFENDANT: No, sir.

THE CLERK: do you want to act as your own lawyer?

THE DEFENDANT: (I have been doing that for a while now.

THE CLERK: Shall I arraign the defendant for sentence?

THE COURT: Do you have a lawyer?

THE DEFENDANT: NO,sir.

THE COURT: Well, at the trial you acted as your own lawyer through your own choice, but the Court asked Mr. Leopold of the Legal Aid Society to assist you in whatever way possible. The Court will ask Mr. Leopold to do the same.

MR. LEOPOLD: May I approach the bench, your HOnor?

THE COURT: YEs.

(Discussion off the record, Mr.Leff and Mr.Leopold at the bench.)

THE COURT: We will call it again.

THE CLERK: Francisco Martinez.

(Present Assistant District Attorney John A. Chatfield.)

THE CLERK: Francisco Martinez, present in court is Mr. Edward Leopold of Mr. Marra's office to assist you and advise you.

The District Attorney has filed an information against

you accusing you of having been previously convicted of one certain felonious crime committed within this State. That is to day that on or about March 3, 1959, in the Court of GEneral Sessions, County of New York, before the Honl Thomas Dickens, a Judge of said Court, you were duly by law convicted of attempted grand larceney inthe 2nd degree, and were threupon sentenced to a state institution.

If you do not admit thatyou are the same person and were so convicted as chargedin the information filed against you, it is your right to be tried as to the truth of this according to law. Are you the same person and were you so convicted?

THE DEFENDANT: Yes.

THE CLERK: You also have the right to challenge any prior conviction on the grounds that it was obtained in violation of your constitutional rights. Do you now challenge your prior conviction?

THE DEFENDANT: No.

THE CLERK: YOu are now arraigned for judgment on your conviction of attempted robbery in the 1st degree, attempted grand larceny in the 1st degree, asaault in the 2nd degree, and possessing a dangerous weapon, as a felony.

Doyou have any legal or other cause to show why

the judgment of the Court should not now be pronounced against you according to law?

THE DEFENDANT: Sure I have.

THE CLERK: Address the Court.

THE DEFENDANT: Number one, I was forced to go to trial.

THE COURT: Wait. Tell me.

THE DEFENDANT: I was forced to go to trial by you because I asked for my own attorney, I told you that I wasn't ready for trial, I don't know about law, and you told me that I have two previous lawyers and I fired them and I had to go to trial with Mr. Leopold, and I told you I wasn't satisfied with Mr. Leopold, because I had my own lawyer and the other two lawyers that my mother had for me was no good, because all they was looking for was money, so I was looking for the right lawyer, but here you keep insisting no, I must go to trial.

You even dropped that paper on the -- yelled when the man dropped the paper and --

THE COURT: Now is your chance. Put it on the record.

THE DEFENDANT: YEs, I wouuld like to go to Bellevue for observation.

THE COURT: Anything else?

THE DEFENDANT: No.

THE CLERK: Mr. Leopold.

MR. LEOPOLD: As your Honor well knows, we did not represent the defendant at trial; that was his specific request. He now tells me upon sentencing that he wishes me to speak in his behalf, and I willdo that at his direction.

YOur HOnor has a full probation report. I know you have read it so you are familiar with the defendant's criminal as well as psychological and sociological background -- whatever these terms mean.

THE COURT: So far as the criminal record is concerned, he has an extensive criminal record. So far as the psychological background is concerned, the man doesn't seem to have any insight into the seriousness of what he has been doing, not only in this case, but all through his life.

MR. LEOPOLD: Perhaps that is why perhaps the best procedure at this juncture may be for him to be examined by a psychiatrist.

THE COURT: You see, nobody hates him.

THE DEFENDANT: YOu showed at the trial that you wanted to help me, all you showed was you wanted to get me off the street, all the way, the whole trial. You know that was true. When the D.A. talked he said things

he wasn't supposed to, you stopped.him.when he done that several times.

MR. LEOPOLD: What I would like to say, the defendant was found guilty of the entire indictment. He is a 2nd felony offender. Within that indictment there are lesser charges. When sentencing him I would ask your Honor to sentence him to the least possible sentence thatyou Honor can within the entire indictment.

THE COURT: The defendant is sentenced as follows: ON the charge of attempted robbery 1st degree, not less than 7 and a half, nor more than 15 years.

ON the attempted grand larceny in the 1st degree, not less than 7 and a half nor more than 10 years.

On assault in the 2nd degree, not less than 7 and a half nor more than 10years.

On possessing a dangerous weapon as a felony, not less than 7,nor more than 14 years,

all sentences to run concurrently. That means that the most that you got was 7 and a half to 15.

THE DEFENDANT: Can I speak to my mother?

MR. LEOPOLD: YOur HOnor, before your Honor finally executes the sentence,Mr. Segal is before the Court. He informs me that it was his intention to represant Mr. Martinez at the sentencing.

I will ask your HOnor to vacate all the prior proceedings up until this point, in the interest of justice.

THE COURT: Mr. Segal, what is it that youwant?

MR. SEGAL: Not what I wanted, your Honor.

THE COURT: Let's not go through idle gestures, mere —

MR. SEGAL: May I introduce my reason for being here toyour Honor?

THE COURT: Certainly.

MR. SEGAL: A few weeks ago this young man's mother got in touch with me and she asked me to visit her son who was at Riker's Island for the purpose of seeing what I could do in his vehalf.

I requested the papers. I examined the papers on file and I learned that there had been a conviction, your Honor, for attempted robbery and other matters. I went over to see this young man and I found a rather irrascible fellow greeting me, because he was of the opinion that a wrong had been done to him.in finding him guilty.

I found that he had, as is common with some people, he had represented himself in a large measure.

I thought there was something wrong with the young man. I didn't know but that I ought to bring it to your Honor's attention because of the violence — his language and his

expressions, when I was through talking to him he said, "I don't want to see you again"; I had done nothing but come over and try to help him, and I didn't urge him to do anything in anydirection other than to learn from him what his expression was with regard to this case.

I had intended, your HOnor -- his mother called me last night and asked if I would appear here in spite of the fact that he said, "I don't want to seeyou again" I thought I would come to your HOnor and address your Honor and give you at least what I learned in my session with him where he as abusive for no reason other than he thought he should be out on a certificate of reasonable doubt when I advised him that he didn't get out on a certificate of reasonable doubt and the whole world collapsed; and I was someone whom he didn't believe.

I do think something is wrong with this young man, omething ought to be done; he doesn't know what is going on; what is happening to him at this very minute, and I was hoping your Honor might entertain an application to x commit him to see whether or not you might not be visiting an injustice upon him, because he didn't understand the nature of this whole thing.

THE COURT: Anything else you want to say, Mr. Segal?

MR. SEGAL: Just this, your HOnor. YOur HOnor has

extreme power in a case of this kind. I believe 2nd offender, but in the conviction I observed that are major and lesser crimes. I can only appeal to your HOnor since I know very little about the case other than what I have learned by inspection of the record and by a short conversation, that you might under the circumstances give him that punishment which would be applicable to the lowest of the crimes for which he has been convicted.

THE COURT: The Court has listened to the defendant, listened to Mr. Leopold, listened to Mr. Segal, the Court has listened to the defendant himself. The Court watched the defendant perform during the course of his trial; the Court watched the defendant perform here this morning. Insufficient has been shown to warrant the Court's arriving at the conclusion that there is even a question as to this man's ability to understand the nature of the proceedings or to be able to make his defense. Accordingly, the Court declines to send this man to Bellevue.

So far as the sentence is concerned, the sentence has already been imposed, and Mr. Leopold's application to vacate the sentence is denied.

So far as your remarks are concerned, Mr. Segal, as a second offender on attempted robbery in the 1st

degree, the Court could have sentenced him anywhere from 7 and a half to 30; and what the Court did was to sentence him to 7 and a half to 15; and on the lesser crimes the Court could have sentenced him to 7 and a half to 10 on the grand larceny and assault in the 2nd degree -- to 7 and a half to 10; and on the possession of a dangerous weapon 7 to 14. So that is what the Court did, all sentences to run concurrently, so that the maximum sentence he faces is 7 and a half to 15.

I think you have all done an excellent job forhim. for a man who is his own worst enemy. Heis just anti-social; he is just an onery and a wise guy, and he thinks he can brazen it out. Of course, if I were to permit my feelings to run away with me I would throw the book at him; but I haven't done it. If he behaves himself he might get a break.

MR. SEGAL: I know this about your Honor -- and I don't mind saying it on the record -- that whereever possible you will help a defendant.

First, let me extend my thanks to Mr. Leopold to step in, and to your HOnor for permitting me to express myself.

THE COURT: I wasn't partial. He's got a considerable criminal record.

MR. SEGAL: I know that your HOnor.

THE COURT: Thank you very much, Mr. SEgal. The Court is indebted to you for coming in and giving us the benefit of whatever you can on his behalf.

MR. SEGAL: One other matter. If I stand in for Mr. Martinez, under the rules of the Court, he must be advised, having had assigned counsel, of his right to appeal.

THE COURT: YEs. Please advise him that he has a right to appeal. That's the best thing to do for his benefit.

THE CLERK: Francisco Martinez, have you been advised by Mr. Leopold of your right to appeal in this case? Has Mr. Leopold told you of your rightto appeal?

THE DEFENDANT: Yes.

Charlotte CohenCSR

Court Reporter

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SUPREME COURT : NEW YORK COUNTY

SPECIAL AND TRIAL TERM, PART XXXIV

- x

THE PEOPLE OF THE STATE OF NEW YORK

-against-

FRANCISCO MARTINEZ,

Defendant.

Indictment No. 999/66

HEARING

- x

February 13, 1969

Before:

HONORABLE JOSEPH A. MARTINIS,

Acting Justice.

Appearances:

LAWRENCE DUBIN, Esq.
Assistant District Attorney, N. Y. County
For the People

LEONARD R. FISHER, Esq.
For the Defendant

Robert Darwick, CSR
Official Reporter

trial. You are now ready to call your witnesses for the defense. You have four witnesses available. You have the police officer. You have the detective. You have Mr. Acillo. Was it three or four?" And do you recall saying, "My mother told me this morning she'd have a lawyer." And the Court saying, "I'm not interested in your having a lawyer other than the lawyer now sitting alongside of you." Do you remember saying, "But he's not my lawyer. I need my own lawyer."

Q Do you remember that?

A I remember part of that.

THE COURT: That's in the record. The record speaks for itself. It's in evidence. I'll look at it.

MR. FISHER: I have no further questions of this witness.

THE COURT: Step down.

(Witness excused.)

THE COURT: Next witness.

I Z A A K G O R L I C K I, Dannemora, New York, called as a witness on behalf of the Defendant, having been first duly sworn, testified as follows:

MR. FISHER: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. FISHER:

Q Dr. Gorlicki, are you a physician duly licensed to practice medicine in the State of New York?

A Yes, I do.

Q Of what institutions are you a graduate, sir?

A Paris, France.

Q Is that the Sorbonne? A Yes.

Q What is the year, sir? A 1939.

Q Have you practiced medicine continuously from 1939 to the present day? A No. Since 1949.

Q Was that the year you were admitted to practice in the State of New York, sir?

A No. I was admitted in 1951.

Q Now, have you made any specialty in relation to the practice of medicine?

A I specialize in psychiatry.

Q Are you presently associated with any mental hospital? A Dannemora State Hospital.

Q Any other hospital, Doctor? A No.

Q In what capacity are you associated with Dannemora State Hospital?A I'm a resident physician.

Q Doctor, did you have occasion to consult certain hospital records in relation to Francisco Martinez? A Yes.

Q When did you make such study?

A This morning.

Q Would you tell us which hospital records or which records in relation to mental institutions you had an opportunity to read? A Kings Park State Hospital.

Q Any others? A And Dannemora State Hospital.

THE COURT: You say you are the resident physician of Dannemora?

THE WITNESS: I'm a physician and resident.

THE COURT: A physician?

THE WITNESS: Yes. I'm a psychiatrist.

THE COURT: That's what I'm waiting to hear. You are a psychiatrist?

THE WITNESS: Yes.

THE COURT: All right. That's what I wanted to hear.

Q Now, I think you were going to tell us of what institutions you had an opportunity to read the records. A Kings Park State Hospital.

Q Any others? A Dannemora State Hospital, too.

Q What about Wassaic, Doctor? A And Wassaic. I

just looked.

Q Did you go through that?

A No, not going through. I just seen it.

Q You heard the testimony of the defendant while he was on the witness chair? A I did, yes.

Q And you heard him testify to the various mental institutions to which he was confined in his lifetime, Doctor? You heard that; is that correct?

A Yes.

Q Commencing with Wassaic Hospital in 1948, at the time when he was less than ten years of age?

A Yes.

Q Now, what do your records indicate, and I have reference to the Dannemora State Hospital record?

MR. DUBIN: Objection.

MR. FISHER: I haven't finished my question, Mr. Dubin.

THE COURT: Go ahead. Finish your question.

MR. FISHER: I'll withdraw the question.

Q Doctor, what do your Dannemora Hospital records indicate as to the date when the defendant, Francisco Martinez, was admitted?

A I need the record to refresh myself

Q Would you please consult the record.

A I don't have it.

(Record handed to the witness.)

A In answer to your question, he was admitted May 29, 1967 from Sing Sing Prison.

Q When was he ultimately discharged?

A September 25, 1968.

Q What was the diagnosis on the date of discharge, Doctor? As appears from your records.

A Psychosis for psychopathic personality, schizo type, schizoid, [redacted] traits.

Q That's psychotic, is that correct, Doctor?

A Yes.

Q Now, have you had an opportunity to look at the Wassaic record? A I did look through it, yeah. I didn't read. I just looked.

Q Can you tell us the date of admission and the date of discharge from the Wassaic record, Doctor?

A I have it here. Resume of his admission and length of stay in Wassaic State School, January, '51 until January, '52. This I assume is the correct date. He would have been at that time twelve years old.

Q Doctor, I show you the Wassaic Hospital record

and ask you to consult it with reference to the date of admission, please.

MR. DUBIN: Your Honor, the People will concede that this defendant was institutionalized at various times. He's testified to that effect. There was no cross examination on that point. I'll stipulate to the fact that he was in various mental institutions prior to the time that he committed the crime for which or resulted in a sentence. There's no dispute about it.

MR. FISHER: I'll accept that stipulation.

THE COURT: All right. It's so stipulated.

Q What was the diagnosis of the defendant's mental condition upon his admission to Dannemora State Hospital, and I think that you said it was during the month of May of 1967; is that correct, sir?

A Yes. I said the diagnosis same on discharge.

Q What was that? A Psychosis, psychopathic personality, schizoid traits. Discharge, recovered.

Q Was he discharged as recovered? A Yes.

Q From that condition? A Yes.

Q Now, Doctor, from sitting in the courtroom, you are aware of the fact that this defendant was tried before a court and a jury in this Court on August the --

in August of 1966, on an indictment charging him with robbery, assault, grand larceny and possession of a dangerous weapon; is that correct, Doctor?

A Yes, I heard that.

Q Now, I'd like to read a portion of the record to you, Doctor. I'm reading from the bottom of page 124 of the case record.

MR. DUBIN: Your Honor, may I approach the Bench at this point?

(Discussion off the record at the Bench between counsel on both sides and the Court.)

Q Now, Dr. Gorlicki, I'm reading from the trial minutes: The Court speaking:

"Now, stop."

No, I'll withdraw that. The Court addressing himself to the defendant:

"Now, I want him kept here."

The defendant is speaking:

"Your Honor, what do you want to do that for? Your Honor, listen. You make -- What are you trying to do to me?"

The Court is speaking now:

"Now, stop, Mr. Martinez.

"THE DEFENDANT: Now, I'm doing time on Riker's Island now. They want me to stay here. I'm set up over there.

"THE COURT: Mr. Martinez, this Court --

"THE DEFENDANT: Never mind the Court. I'm trying to prove something and you're not letting me. You're using psychology left and right, baby, talking to me Court.

"COURT CLERK: He's to be kept here?

"THE COURT: Yes.

"THE DEFENDANT: Listen, you're not sitting in this courtroom no more. We'll see now whether you want to or not. You don't see me here no more. You don't see me here no more. You want to play your games and send me to Mattewan, and play with your games. He wants to keep me here in this rat hole over here. I'm doing time on Riker's Island, and now he's keeping me here. You think it's going to make me plead guilty by keeping me in this hole?

"THE COURT: I wouldn't accept your plea of guilty. I wouldn't permit you to plead guilty.

"THE DEFENDANT: What do you want to keep me here? I've been doing good there. I've been coming here for

the last six months. Now, all of a sudden, you want to keep me here.

"THE COURT: I want to find out if you're guilty or innocent.

"THE DEFENDANT: I don't even know what to say. Sometimes I get up and say anything that gets in my mind, and now you want to keep me here too, huh?

"THE COURT: Tomorrow morning.

"THE DEFENDANT: It's not going to be tomorrow morning unless you get twenty officers to break my neck and bring me out here. I want to go back to Riker's Island. I'm doing good over there. Now you want to put me in this hole over here.

"THE COURT: Tomorrow morning.

"THE DEFENDANT: It's not going to be tomorrow morning, your Honor."

Now, Doctor, how would you characterize the defendant's state of mind in relation to what I have just read from the minutes to you? A Excited.

Q Would you say that he was rational when he spoke those x words, Doctor?

MR. DUBIN: I'll object to the form of the question.

THE COURT: Overruled.

A He was in a state of excitement. He was --

THE COURT: Would excitement be a normal inference from being on trial in a case, charged with a serious crime?

THE WITNESS: Trial is a state of tension to an individual.

THE COURT: Would tension necessarily follow with a person who is on trial for a serious charge?

THE WITNESS: Yes.

THE COURT: Isn't that a normal reaction?

THE WITNESS: It is, especially when it's a subjective experience.

BY MR. FISHER:

Q Considering the manner in which the defendant addressed himself to the Court as I read from the minutes, would you say that the defendant was competent mentally?

A Probably he was not. I would assume --

Q Your answer is probably not; is that correct, Doctor? All right. Now, Doctor, on the basis of your experience --

THE COURT: Just a minute. The answer was -- What would you assume?

THE WITNESS: I would assume he was not in a state

of mind to defend himself.

THE COURT: Because he becomes obstreperous?

THE WITNESS: Because of his --

THE COURT: What is there in what he said which from a psychiatric standpoint shows that he is suffering from any psychosis?

THE WITNESS: He was a poor judge, he was using poor judgment in not accepting a lawyer in the first place.

THE COURT: You weren't asked anything about judgment in getting a lawyer. You were asked, based on what transpired in the court between the defendant and the Judge, whether that in and of itself would show that he was competent to understand the proceedings.

THE WITNESS: He understood the proceedings.

THE COURT: He did?

THE WITNESS: It appeared to be. I wasn't there. I don't know.

BY MR. FISHER:

Q Doctor, considering your knowledge of the case, your reading of the records, how would you characterize the defendant's mental state from what I read to you, Doctor?

THE COURT: He said he was excited.

A I said excited.

Q Nothing more than excitement, Doctor?

A He was in a state -- Usually, when judging by past record, judging by his past performance and by his being in several mental hospitals, by his behavior pattern, I would assume -- and there's no question about this -- that he has been emotionally unstable all his life, until this happened.

Q Would you then characterize --

A And being emotionally unstable, naturally, these people are impulsive, quick to make rash judgment, and the judgment is defective many times, and unable to handle their own affairs judicially.

Q At any rate, Doctor, would it be fair to say that from what I read to you, that would indicate emotional instability on the part of the defendant?

A When you are in a state of excitement, you naturally are emotionally not stable.

Q Then your answer is yes to that question?

A You may say certain things which you regret later. This could be part of the instability.

Q At any rate, from what I read would that

appear to you as a trained and experienced psychiatrist to indicate emotional or mental instability on the part of the defendant? A It indicates —

THE COURT: Objection is sustained. Mental instability, emotionally unstable.

MR. FISHER: Let's say emotional instability.

THE COURT: There's quite a difference between emotional instability and mental instability.

Q All right, sir. The question is then: Does it indicate emotional instability on the part of the defendant? A Yes, emotional instability.

Q Now, Doctor, —

THE COURT: Emotional instability doesn't preclude his understanding what's going on, does it?

THE WITNESS: The basic premise is that he stood trial, so he understood what the proceedings are.

Q That could go either way, could it not? He could either understand or not understand what was going on; wouldn't that be correct?

A Usually, what I read in this record, he has periods when there's some -- his contact is not too, not too clear at times. I would assume at that time he must have lost that some contact and he was insulting the

Judge, As a matter of fact. This is what he was doing.

Q Doctor, are you telling us there were times when he had lucid moments and at times when he did not have lucid moments; would that be fair?

A Lucid moment means that he's disoriented. This is a different story.

Q You talked about contact. A Usually in a state of excitement, these people lose contact with full reality. They are not -- It's blurred, it becomes blurred.

Q In other words, there is a vast difference between a sane, normal person being emotionally upset and a person of mental instability being upset; is that correct? A Yes, yes.

Q Now, on the basis of your experience and training as a psychiatrist, assuming that the defendant from a very early age was confined to a series of mental institutions for the periods of time he testified to while he was on the stand; you heard that, Doctor?

A I did hear that.

Q Can you state with any degree of reasonable certainty in your opinion whether or not the defendant was mentally capable of conducting a trial, a jury trial

on four felony indictments or four felony counts contained in an indictment, before a jury in the month of August of 1966? A On the basis of what he said?

Q Of mental instability. A On the basis --

THE COURT: I must sustain the objection, counsellor. There's no evidence before the Court of mental instability. All this doctor testified to when you read the portion of the record which you did was that it showed there was some emotional instability. There's no evidence before the Court that there was any mental instability.

MR. FISHER: What about the hospital records? They are all before the Court.

THE COURT: The hospital records speak for themselves. But by the same token you do not delete from your hypothetical question nor is there any evidence in the record to show that he might have been in a period of remission during his confinement in the institution; and it certainly must be so, because he was returned to state's prison and returned to Riker's Island. So he might have been in remission during those periods, and in all probability be in remission at the time of the trial on August 12th.

You've got to sustain your position here that during this trial this defendant did not understand the nature of the proceedings and was incapable of making a defense thereto. You just can't take all these facts that he was previously confined to an institution in these various periods of time and say therefore he didn't understand. You got to give the Court some basis at the time of the trial.

The most you got from this witness was that he was emotionally unstable at the time he was arguing with the Court, and in that respect that happens on many occasions in many cases.

MR. FISHER: But, your Honor, I've introduced this record in evidence.

THE COURT: I'm going to take the record.

MR. FISHER: That's not the only instance of the --

THE COURT: I'm sustaining the objection to the hypothetical question or to your question on the ground that it does not incorporate all the evidence in the case. Further, -- Go ahead, I don't want to preclude --

MR. FISHER: In that case, your Honor, I'm tempted to have the doctor read the entire case record and then give us his opinion as to the defendant's --

THE COURT: You can do that if you wish.

MR. FISHER: Obviously, it can't be done today.

THE COURT: No, it can't.

MR. FISHER: Because we have a record here of about 300 pages.

THE COURT: Very frankly, he should have been given the record before.

MR. FISHER: I didn't meet the doctor until this morning. He's 350 miles from New York. Perhaps I might work out a stipulation with counsel that may do justice to both the position of the People and of the defendant.

THE COURT: I'll take the record and I'll read the record. All you need from this doctor would be some substantiation of your contention that this defendant did not understand the nature of the proceedings and was incapable of making a defense thereto. That's your problem.

While we're at it, counsellor. I think on your other point, with respect to the position of his not having counsel of his own choosing, I would suggest that you read the Appellate Division opinion in the case of People v. Biggins and Nelson which was affirmed

by the Court of Appeals.

MR. FISHER: Would your Honor have the citation?

THE COURT: With the same contentions that were raised in that case. That was a case just as this. There was some question about the defendant wanting counsel, and counsel was assigned to assist him, and the defendant did proceed with the trial himself. And the Appellate Division held there was nothing wrong with that. I'm just giving it to you for your own information. It's a recent case. It happens to be my case.

MR. FISHER: Would your Honor have the citation handy?

THE COURT: Offhand, no.

MR. FISHER: People v. --

THE COURT: Biggins and Nelson. It was in the Court of Appeals about a year ago.

MR. FISHER: I'm going to ask this question of the Doctor:

Q Doctor, on the basis of your experience as a trained psychiatrist, considering the defendant's mental [illegible]ability prior to August of 1966 and the various mental institutions to which he was confined from an

early age, can you state in your opinion, with any degree of reasonable certainty, whether or not the defendant was competent to represent himself or making his defense in the trial of a felony jury case in this Court in August of 1966? I'm asking your opinion, Doctor.

THE COURT: The question is clearly objectionable, but I'll permit him to answer it.

A I don't think he was competent to represent himself.

MR. FISHER: That's all.

THE COURT: What do you base that on? Did you know--

THE WITNESS: I know if I were sick I would not treat myself. I would ask another physician to treat me.

THE COURT: You knew this defendant was in Dannemora, did you not?

THE WITNESS: Yes.

Q BY THE COURT: And you know he was returned to state's prison, do you not?

THE WITNESS: Yes.

THE COURT: And usually that is done when a patient is in remission; isn't that correct?

THE WITNESS: Yes.

THE COURT: Or he's now reached a point where he can comprehend and he knows what he's doing, so then

he's discharged and sent to the institution from which he comes, in this case Sing Sing Prison; isn't that correct? That's what they do up in Dannemora, don't they?

THE WITNESS: Yes.

THE COURT: The man is sent there because there's some question as to his mental capacity, and then when you find that he now is in a position to be released, he's sent back to the institution?

THE WITNESS: Yes.

THE COURT: And that was done in this case?

THE WITNESS: No. In this case --

THE COURT: He was sent to Riker's Island, wasn't he?

THE WITNESS: No. This attorney, Mr. Fisher, asked me a different question, before he came to Dannemora, a year before. Actually, this is a hypothetical question.

THE COURT: You don't know what his condition was then?

THE WITNESS: No.

THE COURT: You don't know what his condition was in 1966?

THE WITNESS: No, I don't, because I have not known

him. The only thing, whether I have known him or not, you don't have to know a patient at that particular time. You judge a person not in a cross section but in a longitudinal way. In other words, how he behaves, how he performed, how he acted all his life.

So, in answer to the question of Mr. Fisher, this was my -- as I answered him this way.

THE COURT: You have sat in Court while he was on the stand, did you not?

THE WITNESS: Here, yes.

THE COURT: You heard him testify that he told the Judge that he didn't want the lawyer representing him, that he wanted another lawyer; you heard him say that?

THE WITNESS: Yes.

THE COURT: You heard him also say that he had lawyers before that time that he had discharged?

THE WITNESS: Yes.

THE COURT: You also heard him say that he questioned some of the witnesses because he wanted to try his own case?

THE WITNESS: Yes.

THE COURT: Well, now, what does that mean to you? Doesn't that show there's some mental capacity to

understand what's going on?

THE WITNESS: It may show --

THE COURT: It may be foolish --

THE WITNESS: His subjective may have been good.

MR. FISHER: Your Honor, I must intrude at this point. Surely the defendant cross-examined and participated in the proceedings, but how, your Honor? It was a sham and a circus.

MR. DUBIN: I'm going to object to counsel's characterization.

MR. FISHER: The record speaks for itself.

MR. DUBIN: That's exactly it.

MR. FISHER: It's an incredible sham and circus from the record, your Honor.

THE COURT: What else do you want from this witness?

MR. FISHER: That's all.

CROSS EXAMINATION

BY MR. DUBIN:

Q Dr. Gorlicki, you weren't present during the trial in August of 1966? A No.

Q In fact, Dr. Gorlicki, as of that time had you ever seen this defendant before? Had you ever treated him prior to August, 1966? A No.

Q Am I correct in stating that the first time you saw him was sometime after May 29, 1967?

A Exactly.

Q And that would have been over a year after he was convicted; is that correct? A Yes.

Q Now, Mr. Fisher asked you a question from the record and he asked you a hypothetical question based upon what was read to you in the record. Now, you di didn't see the manner in which the defendant testified at the trial, did you? A No.

Q You don't know actually what state of excitement he was in physically, do you? You didn't hear the manner in which he answered or the level of his voice during the period of the answer, did you?

A No, I didn't, but --

Q You didn't; is that correct? A I didn't. I can assume he was excited --

Q I didn't ask you if you can assume.

MR. FISHER: I think in all fairness the witness should be permitted to finish the answer. Counsel can't cut him off at the discretion of counsel.

THE COURT: Let him assume he was excited.

Q Or even assuming he was excited. Let's go

now, Dr. Gorlicki to sometime after May 29, 1967. At that point, did you x have occasion to interview and speak to this defendant? A Which point?

Q After May 29, 1967 when he was admitted to your institution. Did you then at that point have occasion to talk to him? A I did, yes.

Q And at that point did you ask him about what went on during the course of his trial? A No.

Q Did you ask him if the indictment was read to him? A No, I didn't.

Q Did you ask him if he understood what robbery in the first degree meant? A No. The tenor of my questioning --

Q Ma Just yes or no? A No.

Q You didn't. Did you ask him whether in fact he talked to his attorney during the course of the trial? A You ask me questions which I cannot remember, really. I ~~ma~~ may have asked him some questions about this robbery. I cannot really answer this.

Q Do you remember going back and trying to go through actually what happened to him during the course of the ~~time~~ trial? A I don't think so, no.

Q Now, you stated before that he was suffering

from a psychotic state; is that correct? A Yes.

Q And you gave a label to it?

A I gave a label.

Q What was the label that you gave to it?

A Psychosis with psychopathic personality, schizoid traits.

Q Schizoid, is that the level, the heading or category he was under, the type of psychosis he was suffering from? A It's a sub-category.

Q Could you say with any certainty exactly when that mental state began, the schizoid state started? Could you pinpoint it exactly?

A I can't say exactly when the psychosis -- You referred to the psychosis, really, not the schizoid. Schizoid is part of the personality, which stays with him.

Q Let me ask you about a schizoid personality. Is that sort of a personality that withdraws, comes into -- A No. A schizoid trait is not schizoid personality. I make a differentiation.

THE COURT: Doctor, when are you going back to Dannemora?

THE WITNESS: Tomorrow morning.

THE COURT: What time?

THE WITNESS: Nine o'clock.

Q Let me ask you this, Doctor: When did his psychosis start? Could you say exactly when his psychosis started?

MR. FISHER: When it started?

A I have to go by the records.

Q The record in front of you. I'm talking about based upon your observations of him, Doctor.

A I go by the record. It started in prison, Sing Sing Prison.

Q I see. So that was sometime after the trial; is that correct? A After, oh, yes, about ten months after.

Q Ten months after the trial ended; is that so, Doctor? A Yes. Eight, nine months.

Q You couldn't say with any degree of certainty at this point, based upon on your observations during your interviews and based upon the record that you referred to that he was in a psychotic or schizoid state during the course of the trial, could you?

A No. I was not there.

Q And you didn't talk about what went on during the trial with him, did you? A I don't believe I talked to him about the trial. I may have. I don't -- Usually, I don't do it.

Q And this is the type of person that has periods where he can conduct himself normally; is that not so, Doctor? A Yes.

Q And then there are periods when he becomes sick? A Yes.

MR. DUBIN: Thank you, Doctor. I have nothing further.

REDIRECT EXAMINATION

BY MR. FISHER:

Q Doctor, I think counsel asked you when this psychosis started; is that correct? Was that your understanding? A This particular psychosis.

Q Which particular psychosis? A That caused him to be brought to Dannemora State Hospital.

Q To Dannemora? A This was the question.

Q To the last institution to which he was confined? A Yes.

Q Doctor, I direct your attention to the Wassaic Hospital record. Would you look at it, please? A Yes. This was in '51.

MR. DUBIN: Your Honor, I'm going to object to any reference to the Wassaic. We've been through this. We stipulated to the fact that he has a prior mental history. This is 1951, and the trial took place in 1966, fifteen years prior to the time that defense counsel is now addressing himself to. What possible relevance does it have?

MR. FISHER: The records are in evidence, aren't they?

THE COURT: They are in evidence.

MR. DUBIN: My objection is based upon the fact that it's remote, it's too remote. It's not relevant at this point.

THE COURT: It's the whole history that you referred to.

MR. FISHER: I'm just trying to fix and pin down the beginning of this business, your Honor.

THE COURT: Go ahead. What do you want to ask him?

Q Would you look at that Wassaic record, Doctor, please, and tell us how old the defendant was when that diagnosis of being psychotic was made?

A He was twelve years old.

Q What was the diagnosis, Doctor? A Mental

deficiency, undifferentiated moron.

Q Mental deficiency? A Undifferentiated moron, m-o-r-o-n.

Q I'm sorry. I can't make out what you said after mental deficiency. A This is one classification of mental deficiency. It's today, today, moderate. There's mild, moderate and severe. He was among the moderate.

Q Did you say moron, Doctor? A Yes.

Q Now, in other words, this defendant, at page 12, was put in a moronic classification; correct, Doctor? A Correct, yes.

Q Now, counsel asked you whether or not people of the mental type of the defendant or as the defendant would have periods when they were normal; is that correct? A Yes.

Q Now, when we talk about normalcy, what do we mean, Doctor, considering the history of this defendant, the fact that at age twelve he was classified as a moron, with a mental deficiency, and subsequently diagnosed as a psychotic? To what extent was his mind capable of achieving normalcy? A It's a good question. He probably was never normal in the sense.

MR. FISHER: Your witness.

THE COURT: Doctor, you say that on May 29th, I think you said when he was admitted to Dannemora, that was the first time that you had spoken with him?

THE WITNESS: I don't know when I spoke to him. I usually don't speak the first couple of days.

THE COURT: He was admitted May 29, 1967. Now, here's a petition that's prepared by this defendant, dated August 18, 1967, while he was at Dannemora, and it consists of about fifteen pages, citing the present plight, his conviction, referring to his demand for a lawyer at the time, and the violation of his constitutional rights, setting forth decisions of the Court and the Constitution. Take a look at that.

MR. FISHER: If your Honor please, I'm going to object to the Court's question, if it is in fact a question, on the ground that there is no testimony in this case supporting the assertion that that document was prepared by the defendant.

THE COURT: It's a pro se application.

MR. FISHER: And I can tell the Court now, it was never prepared by the defendant.

THE COURT: Let me see it.

MR. FISHER: It was done by someone else on the defendant's behalf.

THE COURT: I don't know that.

MR. FISHER: This happens quite often.

THE COURT: This I see is written in handwriting, and I assume the fact that it was signed by him. But it may very well be that someone prepared it for him. All right.

MR. FISHER: If in fact the defendant was capable of preparing a document like that, I would remove all objections to the question of mental sanity.

THE COURT: On that point, read People v. Pugach. That was also my case.

MR. FISHER: And the defendant's name was Burton Pugach.

THE COURT: On that last point that you said, that if he had prepared this affidavit, you would not have represented him on that point alone, I say read my decision in the sanity hearing in People v. Pugach.

Anything else? M Can we go over until tomorrow? It's kind of white, and with this weather, It's going to be pretty difficult getting home.

MR. DUBIN: I'd like to ask the doctor one or two

questions.

THE COURT: I don't like to bring him back unless he's available in the morning.

MR. DUBIN: Unless Mr. Fisher has anything else.

MR. FISHER: I have nothing else.

THE COURT: You have other witnesses besides this witness?

MR. FISHER: I have other witnesses.

THE COURT: All right, go ahead.

RECROSS EXAMINATION

BY MR. DUBIN:

Q Doctor, you stated before that there were periods of normalcy that the defendant lived through; is that correct? Normalcy would mean at those periods in his life he wasn't suffering from any defective reasoning; is that correct?

MR. FISHER: Your Honor, I object to that. It's a statement, not a question.

THE COURT: He's an expert.

MR. FISHER: It confuses me, your Honor.

MR. DUBIN: You're not the expert, counsel.

MR. FISHER: I'm the expert lawyer xx here.

THE COURT: In answer to my question, he said that

the defendant at times, he was in remission when he was returned from Dannemora to the institution from which he had been sent. So, go ahead.

Q Is that correct, Doctor? Were there periods in this defendant's life when in fact he wasn't suffering under a mental defect; is that correct? A Yes.

Q And at those times when he wasn't suffering under a mental defect, there would be nothing to prevent him from being competent to understand proceedings in a trial, or would there? A Yes.

Q Now, you stated you didn't examine --

THE COURT: You mean, yes, there would be no impediment?

THE WITNESS: Yes.

Q Doctor, you stated that you didn't personally examine this defendant until over a year after he was convicted; correct? A Yes.

Q Now, Doctor, are you stating, based upon your examination, you could go back to over a year before, to August of 1966, and state at that time he was under a defective reasoning and because of that defective reasoning he was incapable of understanding the nature of the proceedings against him? Are you saying that,

Doctor?

MR. FISHER: That's objected to, because --

THE COURT: Overruled.

MR. FISHER: The witness has taken into consideration the previous confinement and the fact that he was psychotic and a moron at age twelve, your Honor.

MR. DUBIN: Your Honor, that's my question. Mr. Fisher has already asked this question.

THE COURT: Overruled.

A I can only say from my experience, I have seen --

THE COURT: We don't want your experience. We want to know your experience as applied to this defendant.

A This defendant, what I know of this defendant in reading his record and in talking to him, I have a certain picture in my mind about this defendant that he is quite emotionally unstable and not just periods of excitement, is not just excitement like another person, a normal person gets excited. He still has certain contact with reality. People usually in these circumstances, in this type of person, do actually sometimes lose contact with reality, not to the sense that -- because this is quite a wide range, a wide continuity. Some might have mild contact and some have

completely lost contact. I would assume when he gets excited like this, that he really was not in full contact at that time.

THE COURT: Just for that split second?

THE WITNESS: For that split second, yes; for that time when he was, when he was in --

THE COURT: In argument with the Judge?

THE WITNESS: Argument with the Judge. This is perfectly -- it's accepted. There are intenuous contacts. If I may, your Honor, talk about the experience what I have seen. I have seen people with this type of personality, when they are under tension or in prison or under this stress situation, they do lose contact with reality, and not only do they get panicky, but they get excited, and they do things they don't even remember what they did, what they said.

THE COURT: He's testified, for example, that he wanted another lawyer. Now, there's --

THE WITNESS: I'm speaking, about, Judge -- I don't mean to argue -- I'm speaking about the instances that Mr. Fisher read to me.

THE COURT: I'm sure, Doctor, that you have come across cases where there have been colloquies between

defendant and the Court, and perhaps on some occasions where even a defendant's temper rises because of emotional involvement.

THE WITNESS: Yes. This is different. The difference is great. And here are real problems, the crux of the matter. Here the defendant is -- if a normal person like us here, if I get excited, I still have some shred of contact. I know exactly where I ~~am~~ am, what position I am, and what situation I am, not to encroach upon my own either self esteem or freedom. If I were to get angry, against my boss, let's assume, I know how far I can go, what the limits are. And these people lose contact. They don't know the limits, are completely lost. They don't have any limits any more.

THE COURT: Is it possible that these patients may feel whatever they say doesn't make any difference, because they might get thirty days for contempt when they are facing fifteen to twenty-five year term in jail?

THE WITNESS: Exactly. This is true, provided some of their dignity has been restored, they wouldn't care to lose, thirty year sentence.

BY MR. DUBIN:

Q Doctor, are you saying that when he got excited, he didn't know that he was in a court?

A He was insulting the Judge.

Q Did he know that he was in a court? Are you saying that because he got excited, he didn't know that he was in a courtroom? A Well, —

Q Can you say that, Doctor? Just yes or no.

A This is not — I don't talk about simple orientation, disorientation — There's no psychotic, really, a function of a psychotic who loses contact with an orientation; in other words, as to name, place and person. They know all the time.

Q He knew he was in court? A He knew he was in court.

Q Do you think that he knew he was on trial for robbery at the time? A I assume he knew, yes.

Q Did he also know that if he was convicted, he was going to go to jail? Doctor, did he know that also? A He knew that.

MR. DUBIN: Thank you, Doctor.

MR. FISHER: Just two questions and I'm finished, your Honor.

RE-REDIRECT EXAMINATION

BY MR. FISHER:

Q Doctor, you differentiate between orientation and contact; is that correct? A I do.

Q While you say the defendant may have had proper orientation, the contact may not have been there, in other words, the contact with reality; is that correct? A Contact with reality, yes.

Q And he could very well be excited and lose contact; is that correct? A Yes.

MR. DUBIN: I'm going to object to the form of the question.

THE COURT: Overruled.

Q Can you tell us how long this loss of contact would continue after he gets emotionally upset or excited?

MR. DUBIN: Objection, Judge. He wasn't here. He can't base --

MR. FISHER: Your Honor, it was elicited it was for a split second --

THE COURT: He said it could be for a split second. Yes, that's what he said.

Q Do you mean that a person of the mental[illegible] --

this defendant and his mental background could become excited and lose contact for a split second and then return to normalcy? Did you mean that?

A No, I didn't mean a split second. I may have said, but I didn't mean it.

THE COURT: When would he return to normalcy?

THE WITNESS: For a variable period of time.

THE COURT: Could you honestly say when he would return to normalcy under the circumstances?

THE WITNESS: No. I didn't read the whole record.

BY MR. FISHER:

Q There is a time when he returns to ~~normalcy~~ normalcy; correct? A To his normalcy.

Q Normal moron, don't you mean that?

MR. DUBIN: Objection.

THE COURT: Sustained.

A To his normalcy. To his.

Q To his normalcy? A But his normal is not my normal and your normal.

Q You mean to his state of mental capacity; that's what you mean? A Yes, this is what I mean.

Q Would that be sub-normal, in your opinion?

MR. DUBIN: Objection.

Q His state of mental capacity?

MR. DUBIN: Objection.

THE COURT: Sustained.

MR. FISHER: Why, Judge?

THE COURT: Because I have no evidence of mental incapacity before me. All I have is testimony that he was emotionally unstable.

MR. FISHER: What about the hospital records, Judge?

THE COURT: That's why, when you read those questions and answers, that was the doctor's diagnosis.

Now, on what do you base this mental incapacity? The fact that he read all these records of his confinement in institutions before and after the conviction?

THE FISHER: The fact --

THE COURT: Then we go back to the question of whether there are remissions during these periods. Is it possible he was in remission during the trial at the time he was convicted?

MR. FISHER: Remission to what, to the level of a normal moron. That's what I'm trying to --

THE COURT: You haven't proved anything about being a moron.

MR. FISHER: Of course, I have, Judge. The

doctor testified that he was classified as a moron at age twelve.

Q Now, tell me this, Doctor --

THE COURT: It's 4:30 and it's going to be pretty difficult getting home under the weather conditions.

Tomorrow morning at eleven o'clock.

MR. FISHER: The doctor has to leave, your Honor.

THE COURT: Look, I've given you as much latitude as I possibly can.

MR. FISHER: You stopped me at a most crucial time.

THE COURT: Tomorrow you can take more time.

Can you get a later train?

THE WITNESS: I have to leave in the morning.

THE COURT: What time are you going to leave?

THE WITNESS: Nine o'clock. I have appointments in the afternoon.

THE COURT: I appreciate that. That's why I stayed as late as I have under the circumstances. But it's just another question or two and he keeps going on and on. I don't want to limit you, counsel. I want you to get everything you possibly can for the benefit of your client and the record.

MR. FISHER: This is the last thing I'm on.

THE COURT: By the same token, how long can we keep going on. We have been without a recess for over two hours. Go ahead.

BY MR. FISHER:

Q Now, Doctor, you testified from the records of Wassaic that the defendant at age twelve was classified as a moron with a mental deficiency; is that correct, Doctor? A Yes.

Q Now, did that condition ever improve so far as the other records are concerned? A The question is not about whether he improved. Usually, it may improve by a few points. In his case he did improve, because later on --

THE COURT: He did improve?

THE WITNESS: Did, yes.

Q Can you say that the defendant has surpassed the stage of idiocy?

A No, he was never --

THE COURT: He was never an ~~idiot~~ idiot.

MR. FISHER: I'm sorry.

Q Has he ever surpassed the point of being a moronic personality? A I can only judge by his last testing. He's never reached -- At that time, he didn't

reach normalcy.

Q Never reached normalcy, in your opinion?

A At that time, he didn't reach normalcy.

Q When you say last that time, when was --

A When he was last tested.

Q In May of 1967? A I know he was not tested in our hospital.

THE COURT: You don't know?

THE WITNESS: I don't know.

THE COURT: You don't know?

THE WITNESS: I did read that he had an I.Q. of 75 at a later date.

Q What classification would that put him in?

A On the borderline, borderline intelligence.

Q Borderline moron?

THE COURT: Intelligence.

A Borderline intelligence. It's much higher than moron.

Q Can you tell us what is the latest date from the records that you read that gives us any information --

A I believe when he was in Kings Park. This means in 1955, '56. At that time he was tested. I don't think he was tested in Bellevue.

Q Do you have the Bellevue records here?

A At any rate, I was particularly interested in this. I looked up -- I cannot tell the date. I know the last I.Q., what I have seen, was 75, which is much below normal.

THE COURT: And above moron?

THE WITNESS: Oh, yes, much more.

THE COURT: Much above moron?

THE WITNESS: Yes.

THE COURT: In other words, borderline?

THE WITNESS: Yes, borderline.

Q Now, on any remission to normalcy, did he revert to borderline intelligence?

MR. DUBIN: Objection.

THE COURT: I'll allow it, if he can answer it.

A No. He is what he is, and whether -- he never changes.

Q I understand that. Please explain, and that's all I'm going to ask you, Doctor, what we mean when we say a remission to normalcy in the case of this defendant?

A When we say remission to ~~xxxxxx~~ normalcy, when he was discharged from Dannemora State Hospital as recovered, this means he returned to his previous state of normalcy,

to his particular, his particular; I want to emphasize this.

Q Would that be a state of mental deficiency?

A We were talking about mental illness.

Q Mental illness? A Yes.

Q So that would be the state of his normalcy, of mental illness; is that correct? A When he was recovered, he was recovered from this particular episode that he had in Sing Sing Prison. So he returned back to his normal personality functioning, which has never been good, which has alwasy been defective.

Q Would you say that his normal function, mental function, was one that was a deficient mental state?

A Yes. Defective mental state.

THE COURT: Would he still be able to understand that he's on trial for a serious charge?

THE WITNESS: This he knows, yes.

THE COURT: All right. Anything else?

MR. DUBIN: I have nothing further.

MR. FISHER: That's all.

THE COURT: Eleven o'clock tomorrow morning.

(Hearing adjourned to February 14, 1969, 11:00 a.m.)

THE CITY OF NEW YORK—DEPARTMENT OF I

DIVISION OF PSYCHIATRY

Lewis Psychiatric HOSPITAL

CASE RECORD AND HISTORY

Chart No. 66-47-32

N5 PM 2/9

Name Martinez, Francisco

Residence 176 E. 103 St., Man.

Correspond with Father, Manuel M. 50 A

Admitted by Dr. Novick at 12 P.M.

Brought from Res. by Bro-I-law

Petition made by

Patient served by

Relatives served by

Waiver signed by

Hearing was (not) requested

Medical Certificates by Drs. and

on the day of , 19

Committed by Hon. J.S.C.

on the day of , 19

Prisoner of non-Vet

Charged with 12-6-39

Sex M. Age 25 Color L. A. Religion Cath.

Birthplace P. R. (In U. S. 21 yrs.) (in New York 21 yrs)

Education

Occupation Works in grocery store Wages

Citizen { Yes / No

Civil Condition: S. M. W. D. (Sep.)

If married, how long?

Children: Number living Dead

Age of eldest Age of youngest

Miscarriages Still births

Trauma (Mental, Physical)

Habits Alcohol Drugs Tobacco, etc.

History of Previous Attacks:
Number of attacks
Nature
Termination
Hospital Residence
How Discharged

DC 3-19-65

Admissions in other hospitals

Admitted 2/3/ 19 65

Discharged 19

2/9/65 eloped

Final Diagnosis

000 x642 Drug addiction

000 x39 Psychotic reaction undet

Result

Complications

Result

Disposition

(Manhattan) Eloped

Previous admissions and diagnoses

At the age 14 and earlier

1949, 1954

Provisional Diagnosis

193

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

Bellevue Hospital

Chart No. 00-47-32

ADMISSION RECORD

Surname	First	Middle	Sex	Age	Date of Birth	Date Admitted	Ward or Clin.
Martinez	Francisco		M	26			

Permanent Address: 176 E. 90th St. Manh.

Nativity | Color W. ☐ N. ☐ | Other (Specify) | Marital Status S. M. W. D. L.

Occupation

Dates of Previous In-Patient Admissions

FOR IN-PATIENT SERVICE ONLY

On discharge record the following data; Use Terms and Codes of Standard Nomenclature

Date discharged _____ Condition: Improved ☐ Unimproved ☐ Not Treated ☐ A.O.R. ☐ Died ☐

Final diagnosis: Main Condition _____ Code No. _____

Additional Conditions _____ Code No. _____

_____ Code No. _____

Service _____ Visiting Dr. _____ House Dr. _____

In the following report include: FAMILY HISTORY; hereditary conditions and causes of family deaths.
PREVIOUS HISTORY: habits, occupation, childhood diseases, other diseases, operations and injuries.
PRESENT CONDITION: Date and mode of onset, possible cause, course, and review of systems.
For trauma, include cause and time of injury.

Date _____ Signature _____

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

Bellevue HOSPITAL

Chart No. 00-47-

CONTINUATION RECORD

SURNAME	FIRST	MIDDLE	SEX	AGE	DATE ADMITTED	WARD OR CLINIC
Martinez	Francisco		M	25	2-3-65	

Why here? I have been using drugs for many yr. I wanted to kick this habit before I came to the hospital.

What did you use? I have been using heroin, Marijuana since the age of 16.

Did you stay in any mental inst. before? Yes "I was put away" at the age of 6 and stayed at the Wassaic State School. later on my mother took me out and I went to school. I quit the school following the 5th grade and went back to Puerto Rico. At the age of fourteen I came back and started to use drugs.

How did you get the money? By stealing.

Did you serve any time in the jail? Yes. I got a 5 years sentence because of an assault / armed robbery and when I came out I continued to do the same thing.

How much did you spend on drugs daily? ~~18~~ 30$ per a day.

Voices, visions? No

Persec ideas? No

Suicidal thoughts? No

Oriented? Yes in 3 spheres.

Patient is a young Puerto Rican male who never worked during his entire life. He spent about 2 years at the Wassaic St School and some time at the Kings Park St Hosp. During his entire life he didn't learn too much

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

Chart No. _____

.....HOSPIT

CONTINUATION RECORD

SURNAME	FIRST	MIDDLE	SEX	AGE	DATE ADMITTED	WARD OR CLINIC

about moral and ethical standards, he became an immature dependent person who was always quick looking just for immediate gratifications and who wasn't able to foresee things and consequences. However he stayed at the Wassaic State School it was felt that his mental endowment is not too low. Today he was emotionally flat, rather detached, aloof and cold, denied hallucinations, suicidal thoughts. Memory slightly impaired, insight and judgment poor

Dx: 000 - x642 Drug addiction

000 - x39 Psychotic reaction

Medical

Plan. Patient is friendly cooperative, doesn't show any withdrawal symptoms he is manipulative tries to cover up his problems

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S.R. 554C-15M-703140(61) 114

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

DIVISION OF PSYCHIATRY CASE RECORD

HOSPITAL 60-47-32

Name FRANCISCO MARTINEZ Age 25 Serial No.
Nativity (In U. S.) (In N. Y.) Citizen
Sex Color Occupation Civil Condition: S. M. W. D.
Birthplace of father Birthplace of mother
Habits: Alcohol Paternal
Tobacco Heredity: Maternal
Drugs Collateral KINGS PARK
Normal Mental Standard? Duration of Present Attack?
Treatment for syphilis Previous attacks Institution?
Petition signed by M. ANDRE WALKER Med. Cert. by Drs. &
Relative served of the HEROIN
Waivers signed by of the
Committed by J. S. C. on Result on

Pt. admitted to Bellevue Psych.Hosp. 2-3-65 from res. by Bro.-in-law. Pt.,heroin addict, for past week quite depressed and agitated - angry at everyone - breaking up his mother's house. Today broke a lamp and TV in his mother's house where he lives.

M.S.: 2/11 for 2/16: FATHER: MANUEL MARTINEZ 176 E. 103 ST., NYC

UNDERNOURISHED, PALE - BP 120/80 P 72

Pt. never worked during his entire life. Pt. is immature,dependent, emotionally flat, rather detached, memory slightly impaired, insight and judgment poor; manipulative.

Pt. states, (Why here) "I have been using drugs for many years. I wanted to kick the habit so I came to hospital (What use) ~~immio~~Heroin, marijuana since age 16 (Money) by stealing (Serve time) Yes. I got 5 yrs. sentence because of assault and when I came out I continue to do same thing (How much money on drugs) $18-30 a day."

DIAGNOSIS: PSYCHOTIC REACTION; DRUG ADDICTION

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

DIVISION OF PSYCHIATRY

Hospital

PSYCHOLOGICAL REPORT

NAME	AGE	DATE OF BIRTH	SEX	COLOR	MARITAL STAT.	DATE	CASE NO.
Martinez, Francisco	26		M	W		2-8-64	00-47-

PLACE OF BIRTH	TIME IN U. S.	TIME IN N. Y.	EDUCATION	AT AGE	OCCUPATION	WARD

REFERRAL PSYCHIATRIC DIAGNOSIS	FINAL PSYCHIATRIC DIAGNOSIS	PSYCHOLOGIST
		Gambrano

TESTS ADMINISTERED

Wechsler—Bellevue Intelligence Scale	Verbal 81	Perf. 101	Full Scale IQ 90
Wechsler Intelligence Scale for Children	Verbal	Perf.	Full Scale IQ
Shipley—Hartford CQ	Voc.	Abs.	Full IQ
Stanford—Binet Intelligence Scale	MA	IQ	Draw-A-Man
Cattell Infant Intelligence Scale	MA	IQ	
Vineland Social Mat. Scale	SA	SQ	Low Average

	GRADE	PREVIOUS TESTS (Date, Place, Results)
Rorschach	Reading	
Machover F. D. T.		
T. A. T.		
Sentence Comp.	Arithmetic	
Word Association		
Bender Gestalt		
Proverbs	Spelling	
Graphology		

SYNOPSIS OF DYNAMIC CLINICAL FINDINGS: Marked discrepancy in facility handling verbal and performance materials is indicated by IQ's of 81 and 101 respectively. Inasmuch as patient had considerable experience with the test materials throughout the years, these IQ's might be somewhat inflated due to the effects of learning.

An emotionally severely disturbed individual is indicated as well as a sociopathic character disorder. Patient tends to take the easiest way out of a situation and uses his wits to lie himself out of a situation rather than to apply himself to solving a problem. Even when partially successful he, instead of experiencing encouragement and being prompted for further effort, he without apparent reason or explanation, gives up. And will not be influenced to continue.

Similarly during the verbal part of the examination

Do not write on reverse side of this page.

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when he could not easily cope with a question, he would burst out laughing. Asn't when questioned about it, he would answer that he just remembered [illegible] about something funny.

Generally, he appears quite inappropriate in his behavior, he is very manipulative without showing any insight into his behavior.

A psychotic character disorder is indicated with marked sociopathic trends. It is felt that when under duress, he might act out quite irresponsibly

STATE OF NEW YORK—DEPARTMENT OF MENTAL HYGIENE

SERVICE OF NOTICE UPON THE ALLEGED MENTALLY ILL PERSON AND/OR OTHERS

STATE OF NEW YORK COURT, COUNTY OF NEW YORK

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION
OF
Francisco Martinez
AN ALLEGED MENTALLY ILL PERSON

READ THE FOLLOWING CAREFULLY
THIS IS NOT A SUMMONS. IF YOU ARE WILLING TO HAVE THE PATIENT GO TO A STATE HOSPITAL YOU NEED NOT APPEAR. IF YOU DO OBJECT, GO DIRECTLY TO WARD _____ ON _____ AND SEE THE DOCTOR IN CHARGE.

To Self
MARTINEZ, FRANCISCO

TAKE NOTICE that on the petition of _____

and the certificate(s) of Doctors Weinstein and PRESIDING Rojas, an application will be made before the Honorable BELLEVUE HOSPITAL, Justice, Surrogate or Judge of the NEW YORK CITY Court at the _____ in (city, town or village) _____

at _____ m., on the 16 day of Feb, 19 65

for an order certifying said alleged mentally ill person to the jurisdiction of the Department of Mental Hygiene to be received and retained as a patient in an institution or facility in the Department designated by the Commissioner or to Manhattan State
(Insert name of licensed private institution)

DATED

_____
(Name of server of notice)

AFFIDAVIT OF SERVICE

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION
OF

AN ALLEGED MENTALLY ILL PERSON

STATE OF NEW YORK, NEW YORK
COUNTY OF _____ } ss:

NEW YORK CITY, being duly sworn, says that he is over 21 years of age, and resides at _____; that on the _____ day of _____, 19____, at _____ he served a notice of application for an order adjudging such person to be mentally ill upon _____ BY MAILING A COPY
(Name of person served)
by delivering a true copy of said notice personally and leaving the same with h . He further says that he knew the person served as aforesaid to be _____
(State whether person served is the alleged mentally ill person. If not, state relationship)

Sworn to before me this _____
day of _____, 19____

_____
(Official title)

_____
(Signature of server of notice)

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THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS
DIVISION OF PSYCHIATRY
[illegible] HOSPITAL
CASE RECORD AND HISTORY

Chart No. 06-67

Name Francisco Martinez

Residence 1762/103 St. Man.

Correspond with Mo. Mama - 1741 Ley. ave. Man.

Admitted by Dr. Maggio at 6:00 P.M.

Brought from I/I by N.A.

Petition made by

Patient served by

Relatives served by

Waiver signed by

Hearing was (not) requested

Medical Certificates by Drs. and

on the day of , 19

Committed by Hon. J. S. C.

on the day of , 19

Prisoner of

Charged with Evaluation

Admitted 2/10/67 19

Discharged 2/14 19

Final Diagnosis

295.9

Diag. Def

Cont

Result

Complications

Result

Disposition

Cust. Dept. Rikers Island

Previous admissions and diagnoses

Provisional Diagnosis

Sex M Age 27 Color W Religion C

Birthplace PR (In U. S. 24y) (in New York 24y)

Occupation Wages Citizen {Yes / No}

Civil Condition: S. (M.) W. D. Sep.

If married, how long?

Children: Number living Dead

Age of eldest Age of youngest

Miscarriages Still births

Trauma (Mental, Physical)

Habits Alcohol Drugs Tobacco, etc.

History of Previous Attacks:
Number of attacks
Nature
Termination
Hospital Residence
How Discharged

Admissions in other hospitals

NAME Francisco Martinez CHART NO. 06-67

201

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS

(Hospital) Bellevue

REQUEST FOR PSYCHIATRIC CONSULTATION

(prepare in duplicate)

Patient's Name	Chart number	Ward	Age	Sex
FRANCISCO MARTINEZ	15-02-03	E/	27	M

Address	Marital status	Race	Occupation
176 E. 103rd St.	S	PR	Clerk

Medical Diagnoses:

Swallowed Razor Blades

Medications currently being taken:

0

Has there been a previous psychiatric consultation? ☐ Yes ☐ No

Does the patient speak English? ☒ Yes ☐ No
If no, what language?

REASON FOR PSYCHIATRIC CONSULTATION (please state briefly the psychiatric problem including whatever abnormal behavior and statements have been observed on the ward):

Patient swallowed razor blade on two occasions recently. He now has refused to eat. He appears severely depressed. Request psychiatric evaluation & recommendations.

Date 2-11-67

Resident's signature Joel G. Hedelman M.D.

ROUTINE CONSULTATION—place original in patient's chart and send duplicate to Psychiatric Consultation Service.

EMERGENCY CONSULTATION—place both copies in patient's chart and call Psychiatric Consultation Service. *Use this method only for all Bellevue Hospital Center requests.*

CONSULTATION NOTE ON REVERSE SIDE

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L. 1817

PSYCHIATRIC CONSULTATION AND OPINION

06-67-16

CONSULTATION NOTE BY DR. (p name)

27 yo. PR male who made a suicidal attempt on 7/11/67 by swallowing a razor blade. He refused to take food for the last 10 days because disappointed by the failure of the attempt.

Young male sitting in a wheelchair, bathrobe. Speech is soft. Relevant, logical, coherent. Looks very depressed. Asked "why" he states that he is no longer able to cope with problems of his life. Thought process does not appear disturbed by any delusional material. Appreciation is not altered. However stated to have auditory hallucinations (voices of). No flight of ideas in the content of the hallucinations. Orientation, memory and intellect not seem altered. Does seem to psychotic in childhood, but he does not remember the reason. Also, he does usually read & write.

Impression: Depressive reaction with suicidal attempt. Pt. is well determined to make such attempt again. Possible CSR/pt. must R/O with further evaluation

Recommendation: Transfer to B.H. Psycho-Pharm ward and start prompt strong antidepressant treatment.

7/11/67 | Signature Leo Langer M.D. | Title Resident 203

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS
DIVISION OF PSYCHIATRY
.....HOSPITAL
CASE RECORD AND HISTORY

1203536
Chart No. H-10513

Name Fatheree Martinez

Residence

Correspond with

Admitted by Dr. at M.

Brought from by MARTINEZ

Petition made by

Patient served by

Relatives served by

Waiver signed by

Hearing was (not) requested

Medical Certificates by Drs. and

on the day of 19

Committed by Hon. J. S. C.

on the day of 19

Prisoner of

Charged with EVALUATION

Sex M Age 38 Color BR Religion —

Birthplace (In U. S.) (in New York)

Education

Occupation Wages Citizen } Yes No

Civil Condition: S. M. W. D. Sep.

If married, how long?

Children: Number living Dead

Age of eldest Age of youngest

Miscarriages Still births

Trauma (Mental, Physical)

Habits Alcohol Drugs Tobacco, etc.

History of Previous Attacks:
Number of attacks
Nature
Termination
Hospital Residence
How Discharged

Admissions in other hospitals

Admitted 2-20 19 67

Discharged 3-2 19 67
3-20

Final Diagnosis

793.0
Mental Disorder
Core

Holden

Result

Complications

Result

Disposition

10 ct

Previous admissions and diagnoses

Provisional Diagnosis

NAME

CHART NO.

204

S.C. 3002-750M-701032(59) — 114

The City of New York
Department of Hospitals

Bellevue HOSPITAL

Chart No.

PHYSICAL EXAMINATION

Name Watson, Francis Admitted 3/20 1967 Ward

Local Condition General Appearance Eyes Ears	Nose Mucous Membranes Tongue Teeth	Throat Cardio vascular Lungs Abdomen	Liver Spleen Kidneys Sexual Organs	Skin Glandular Systems Bones—Muscles—Joints Nervous System

Surgical
Shot (2) Hip - 1965
Stabbed (1) Right chest - 1958
Resection by - circumcision
Psychiatric
Suicidal - tendencies -
Bellevue Psych - 1958
Psychiatric treatment OS
Chest
Allergies -
Medications -
Visual - Stockton - Nov. 1966
ROS
General - Chills + fever 5-6 months -
Circulation - (N) (BP 32 kg) - ? Arrest
CNS - Syncopal episodes c
head noises since birth
GI - Occasional nausea + vomiting
Diffuse abdominal pain - continuous
GU - Rectal strictures requiring
periodic anti-anorectal dilatations
Deliveries, Miscarriages -
Chest - Chest pain, cough,
Hemoptysis + "blackouts"
CVR - SOB on exertion & leg
edema.

SH - Used to be smoker - reduced
Drinks 2-3 oz. of citrus. Illi.

Signature

205

S.R. 5001 (Rev. 1961)-600M-701573(65) —D— 114

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

Chart No. 16 12 03

Seamen's HOSPITAL

ADMISSION RECORD

Surname	First	Middle	Sex	Age	Date of Birth	Date Admitted	Ward or Cl.
Martinez	Francisco		M	33	12/6/30	2/21/67	I
Permanent Address			Nativity		Color W. ☐ N. ☐ Other (Specify) PR		Marital Stat. S M. W. D.
Occupation			Dates of Previous In-Patient Admissions				

FOR IN-PATIENT SERVICE ONLY

On discharge record the following data; Use Terms and Codes of Standard Nomenclature

Date discharged _____ Condition: Improved ☐ Unimproved ☐ Not Treated ☐ A.O.R. ☐ Died

Final diagnosis: Main Condition _____ Code No. _____

Additional Conditions _____ Code No. _____

_____ Code No. _____

Service Surgery Visiting Dr. STAFF House Dr. MOOH

In the following report include: FAMILY HISTORY: hereditary conditions and causes of family deaths.
PREVIOUS HISTORY: habits, occupation, childhood diseases, other diseases, operations and injuries.
PRESENT CONDITION: Date and mode of onset, possible cause, course, and review of systems.
For trauma, include cause and time of injury.

CC- 2nd BHA of 38 y.o PR m admitted after swallowing a Gillette blade two weeks ago

PI- Patient has a history of swallowing razor blades several times in the past years.
About three weeks ago patient swallowed a razor blade. The blade was seen in the stomach. Patient had no PT or acute complaints. Was watched & patient remained signs. He was transferred to Psych Surgery where sent to follow up till present admission.

PMH
Medical -
No DM, pneumonia
diabetes, heart disease

Date 2-21-67 Signature Joel H. Wolchuck
H. Welch

206

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS

Bellevue HOSPITAL

Chart No. 116026

PROGRESS RECORD

Name Martinez, Francisco Admitted 1/20 1967 Ward 2L

Observations and Opinions of Visitings, Consultants and House Staff.
A Final Discharge Note Must Be Entered on This Sheet. Sign and Date Every Entry.

2-20 PSYCHIATRY

PSYCH CONSULT—

Please evaluate this 38 y.o. PR ♂ who has swallowed razor blade in attempt to harm himself during period of voluntary stupor apparently ♁ suicidal intentions. He has briefly admitted to Psychiatrist that he is experiencing [illegible] V

Jared H. Tobin

2/21/67: Psychiatric consultation note:

Stressing of having visual, often auditory hallucinations which made him extremely frightening. Eventually, he swallowed "razor" following hearing voices.

Had several histories of psychiatric treatment as an out-patient + as an in-patient at state hospital since the age of 8. As a matter of fact pt. was in Kings Park state hospital over 2 years in 1954. Said, "could I have ECT to forget everything."

There is strong possibility pt. is psychotic

Continue Notes on Other Side

Actually ambulatory Psychosis underlying
Chronic S.R.

As regarding his mental states, he
needs further Psychiatric observation
in the Psychiatric ward, for exact
Psychiatric evaluation.

I would suggest to transfer to
N.S.2, including careful surgical
attention.

Psy. Resident.

Evan

2/21 X-rays demonstrate no evidence
of gas in abdomen. Patient is
surgically clear. May be transferred to N.S.

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS

DIVISION OF PSYCHIATRY

.....HOSPITAL

CASE RECORD AND HISTORY

"02

123-53-536

03-30-41

Chart No.....

Name Francisco Martinez

Residence 176 E 103 St Man

Correspond with Maria Martinez 1741 Lex Ave Man

Admitted by Dr. Colon at 8 30 P.M.

Brought from R.I by D.C Van

Petition made by

Patient served by

Relatives served by

Waiver signed by

Hearing was (not) requested

Medical Certificates by Drs. and

on the day of , 19

Committed by Hon. J. S. C.

on the day of , 19

Prisoner of

Charged with FUGITIVE

Sex M Age 28 Color P.R. Religion Cath

Birthplace (In U. S. 26 yrs (in New York 26 yrs

Education

Occupation Wages Citizen {Yes / No

Civil Condition: S. (M.) W. D. Sep.

If married, how long?

Children: Number living Dead

Age of eldest Age of youngest

Miscarriages Still births

Trauma (Mental, Physical)

Habits Alcohol Drugs Tobacco, etc.

History of Previous Attacks:
Number of attacks
Nature
Termination
Hospital Residence
How Discharged

Admissions in other hospitals

Admitted 3/2 1967

Discharged 3/7 1967

Final Diagnosis

793.0

Mental Disorder

Observation

Holden

Result

Complications

Result

Disposition

Ward

Previous admissions and diagnoses

Provisional Diagnosis

CHART NO. 03-30-41

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DIVISION OF PSYCHIATRY
.....HOSPITAL
CASE RECORD AND HISTORY

Chart No. 76-39-4

Name Francisco MARTINEZ
Residence 176 E. 103 St mnh
Correspond with Mrs. Marie Martinez
1711 Lexington Ave. mnh
Admitted by Dr. Schaye at 11 P. M.
Brought from Rikers Island by DC
Petition made by
Patient served by
Relatives served by
Waiver signed by
Hearing was (not) requested
Medical Certificates by Drs. and
the day of , 19
Committed by Hon.
on the J. S. C.
Prisoner of day of , 19
Charged with EVALUATION 12-1-39

MARTINEZ

Admitted MAR 10 1967 19
Discharged 3/20 19 67

Final Diagnosis
293.0
Mental Disorder
Not Halden

Result
Complications

Result
Disposition
Rikers Island

Previous admissions and diagnoses

Sex M Age 37 Color C Religion C
Birthplace PR (In U. S. 25 yrs) (in New York 25 yrs)
Education 12
Occupation ?
Civil Condition: S. (M.) W. D. Sep. Wages Citizen } Yes / No
If married, how long?
Children: Number living Dead
Age of eldest Age of youngest
Miscarriages Still births
Trauma (Mental, Physical)
Habits Alcohol Drugs Tobacco, etc.
History of Previous Attacks:
Number of attacks
Nature
Termination
Hospital Residence
How Discharged
Provisional Diagnosis
H/O
H/O
Admissions in other hospitals

CHART NO. 12-39-4

310

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS #15

DIVISION OF PSYCHIATRY 6(e)

.....HOSPITAL

CASE RECORD AND HISTORY Chart No. 033044

Name MARTINEZ, FRANCISCO

Residence 174 LEXINGTON AVE

Correspond with

Admitted by Dr. MAIO at 250 AM.

Brought from BX H.S. by DC

Petition made by

Patient served by

Relatives served by

Waiver signed by

Hearing was (not) requested

Medical Certificates by Drs. and

on the day of , 19

Committed by Hon. J. S. C.

on the day of , 19

Prisoner of

Charged with FELONIOUS ASSAULT

Sex M Age 27 Color WHT Religion CATH

Birthplace (In U. S. 25 YRS) (in New York 25 YRS)

Education

Occupation CLERK Wages Citizen } Yes / No

Civil Condition: (S.) M. W. D. Sep.

If married, how long?

Children: Number living Dead

Age of eldest Age of youngest

Miscarriages Still births

Trauma (Mental, Physical)

Habits Alcohol Drugs Tobacco, etc.

History of Previous Attacks:
Number of attacks
Nature
Termination
Hospital Residence
How Discharged

8/2/67

Admissions in other hospitals

Admitted 9 19

Discharged 5/27 19

Final Diagnosis

793.0

MENTAL DISORDER

NOS

Hold

Result

Complications

12/19/40 CAT-SCAN-NO ABNORMALITIES

Result

Disposition

4/19/67 PSY

Previous admissions and diagnoses

3/2 TO 3/4/67 - 4/9

3/10 TO 3/12/67

Provisional Diagnosis

#033365

033550

211

NAME FRANCISCO MARTINEZ CHART NO. 33044

THE CITY OF NEW YORK
DEPARTMENT OF HOSPITALS

Bellevue HOSPITAL

Chart No. 7777

CONTINUATION RECORD

SURNAME	FIRST	MIDDLE	SEX	AGE	DATE ADMITTED	WARD OR CLINIC
Francisco	Martinez		M	27	4/4/67	

April 10, 1967

Psychiatric Examination: The patient has a long antisocial history. He is presently ~~convicted~~ serving time on an assault charge. While out on bail on this charge, last year he was caught in an ~~armed~~ robbery. He was sentenced on that charge, but was first returned to Rikers Island to finish a year's sentence for the assault charge. He describes that he was caught in an escape attempt in December. ~~He claims that he has been beaten by the guards as a result of this and, in addition, stands~~ He states, therefore, requires that the Bench has passed sentence to be faced ~~because he claims he was depressed over this, was beating the charges to have received from the Grand Jury~~ to get an additional sentence for the escape attempt. ~~He says that because of the escape attempt as well as Bloodgood's statement he swallowed bits of metal and pins from the record and his wife's and his mother's, he claimed to swallow bits of metal & pins on a second attempt.~~ He states he felt rejected by them ~~of abandonment by his wife and mother.~~ He states that because they did not get him a lawyer he had to defend himself at trial.

The patient is a young white male who gives his history in a lucid and coherent manner. He is quiet without remorse and attempt to be manipulative. "I tell you the truth, doctor, I want to do something and then I'm scared to do it and I ain't got it ~~beat~~. But I decide I ain't going to do this no more. I swallowed a pin before I come in here."

~~Patient does describe his attempt to swallow various items in a suicide attempt. From his history it appears that he attempted to jump out of~~ a window about a year ago and in the past he has swallowed pieces of razor blades. Even while there is a ~~manipulative~~ aspect in this man activities, it appears that he is also dangerously suicidal and is quite ~~depressed in relation to his having the belief that he will have to~~ serve as much as 15 years, as well as family rejection of him.

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THE CITY OF NEW YORK
EPARTMENT OF HOSPITALS

Chart No. _____

_____ HOSPITAL

CONTINUATION RECORD

URNAME	FIRST	MIDDLE	SEX	AGE	DATE ADMITTED	WARD OR CLINIC

Impression: Reactive Depression; Sociopathic Personality.

It is our recommendation hat because this patient poses a real security threat that he be confined in a maximum security hospital.

Dr.Lubin/mlf

THE CITY OF NEW YORK—DEPARTMENT OF HOSPITALS

(Hospital) _____

REQUEST FOR PSYCHIATRIC CONSULTATION

(prepare in duplicate)

Patient's Name	Chart number	Ward	Age	Sex
Morbury, Francisco				

Address	Marital status	Race	Occupation

Medical Diagnoses:

Swallowed foreign body

Medications currently being taken:

none

Has there been a previous psychiatric consultation? ☐ Yes ☐ No

Does the patient speak English? ☒ Yes ☐ No
If no, what language?

REASON FOR PSYCHIATRIC CONSULTATION (please state briefly the psychiatric problem including whatever abnormal behavior and statements have been observed on the ward): Hospitalization in Psych

6 hr hx of swallowing 3 pins + piece of tin can

No distress @ present except for slight pain

XRay shows objects moving through GI tract

Pt has long Psych history — is suicidal by actions

① 1957 - State Hosp x 4 yrs

② 1964 - Suicide attempt (tried to jump out of window) on NS

③ 1 month ago swallowed razor blade

Following Rx

① Mom 30cc p.o. q 4 h dose given @ 1

② Daily stool

③ Save stool + look for objects

④ Multiple feedings (at least 6)

⑤ Surgical consult if pt becomes acutely

Date	Resident's signature
4/8/67	Stephen Braun M.D.

ROUTINE CONSULTATION—place original in patient's chart and send duplicate to Psychiatric Consultation Service.

EMERGENCY CONSULTATION—place both copies in patient's chart and call Psychiatric Consultation Service. *Use this method only for all Bellevue Hospital Center requests.*

CONSULTATION NOTE ON REVERSE SIDE

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S.R. 1017

PSYCHIATRIC CONSULTATION AND OPINION

CONSULTATION NOTE BY DR. (print name) MAGID

27 y/o man with previous suicide attempt who attempted suicide again today by swallowing pins. Pt. states that he'd prefer swallowing some razor blades so he can "get his guts out". Pt. today would not see his father, mother, and wife since they haven't been in communication with him although he states that he's written them almost daily. Denies ~~ear~~ hallucinations at present. Pt. had audit. & visual hallucinations Jan. 1967 - affect - blunt mood - depressed. Thinking - difficulty interpreting - (Early Bird).

Imp ① Depressive reaction, reactive type - actively suicidal

Recommendation:

① Transfer to NO2

② SUICIDAL PRECAUTIONS - Pt. favors either swallowing razor blades or cutting his throat

Thank you

215

Date	Signature		Title
2/9/67	Barbara Magid	M.D.	Assistant Resident

TYPE OR PRINT, USING PENCIL OR BALLPOINT PEN

X-RAY REQUEST AND RE[illegible]T
BELLEVUE HOSPITAL

Use Addressograph Plate or Show:

WARD R-210-2
MARTINEZ, FRANCIS
03-79-90 4/9[illegible]
12/6/1940
PSY

DATE OF REQUEST 4/10/67
CASE #, UNIT 03-79-90
REQUESTED BY (ATTENDING) [illegible]
NAME, SEX
PER DOCTOR
DATE OF BIRTH,
WARD, CLINIC
PATIENT CAN COME TO X-RAY ☒ AMBULATORY ☐ WHEEL CHAIR ☐ STRETCHER
SOCIAL SEC. #
4/10/67
HAS PT. HAD ANY X-RAYS AT BELLEVUE IN LAST 5 YEARS ☐ YES. ☒ NO
DATE LAST X-RAY

Rt.	Lt.		Both
☐	☐	Clavicle	☐
☐	☐	Shoulder	☐
☐	☐	Scapula	☐
☐	☐	Humerus	☐
☐	☐	Elbow	☐
☐	☐	Forearm	☐
☐	☐	Wrist	☐
☐	☐	Hand	☐

Rt.	Lt.		Both
☐	☐	Hip	☐
☐	☐	Femur	☐
☐	☐	Knee	☐
☐	☐	Tibia-Fibula	☐
☐	☐	Ankle	☐
☐	☐	Foot	☐
☐	☐	Ankle & Foot	☐
☐	☐	Ribs	☐

☐ Finger
☐ Toe
☐ Cervical Spine
☐ Thoracic Spine
☐ Lumbar Spine
☐ Entire Spine
☐ Pelvis
☐ Bone Age
☐ Metastatic Survey

☐ Skull
☐ Sella Turcica
☐ Int. Auditory Canal
☐ Orbits
☐ Optic Foramina
☐ Paranasal Sinuses
☐ Mastoids
☐ Facial Bones
☐ Mandible
☐ Nasal Bones
☐ T.M. Joints

☐ Chest
☐ Sternum
☐ Esophagus
☐ G.I.
☐ Sm. Intestine
☐ Colon
☐ Gall Bladder
☐ I.V. Cholangiogram
☐ T-Tube Cholangiogram

☑ Abdomen
☐ KUB
☐ Pyelogram I.V.
☐ Pyelogram Retrograde
☐ Cystogram
☐ Pelvimetry
☐ Placentogram
☐ Salpingogram
☐ Mammogram

EMERGENCY

OTHER EXAMINATIONS OR SPECIAL VIEWS

PERTINENT HISTORY, PHYSICAL AND LAB. FINDINGS

CLINICAL DIAGNOSIS Ingested a pin today ? Still ~~to be~~ localized

DATE APPT.	TIME APPT. A.M. P.M.	WARD NOTIFIED BY	PERSON TOLD	TECHNICIAN	RADIOLOGIST
				IA Jones	

COMMENT

REPORT

Abdomen: There 2 metallic pins seen. One of them is an open safety pin in the right upper quadrant and the 2nd is a straight pin in the small intestine superimposed over the pelvis. On the single ~~xuppiux~~ supine film, it is ~~impossivxv~~ impossible to evaluate if ~~that~~ both the metallic pins are in the intestine or if ~~thereivxvx~~ either of these are on the patients clothing. However, a repeat study is suggested to evaluate the ~~prgxxx~~ progress of either or both of these pins. It is also suggested that across table horizontal film be taken to see whether both of these pins are/in the patient's abdomen.
with

A. Pawgan, M.D./bd
Superv. by J. Zausner.

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291 — (6-60) 20M

THE CITY OF NEW YORK

DEPARTMENT OF CORRECTION

75

..... HOSPITAL

CLINICAL HISTORY — PHYSICAL EXAMINATION — PROGRESS NOTES

NAME Martinez, Francisco ATTENDING CASE NO. 265-4208

DATE 12/26/66 WARD

Central Admission Note: This pt was seen in the Emergency Room. Patient complains of pain in the left testicle of 15 minutes duration. Pain is described as sharp, radiating to the left groin. Pt was seen by Dr. Peters & Dr. Stern. Examination of the left testicle & epididymis was negative. Pt. was sent to Bellevue Hospital for further evaluation & treatment.

Bellevue Emergency Room Note: Pt. was seen by Dr. Peters & Dr. Stern. Pt. complains of pain in the left testicle. Pt. was sent to Bellevue Hospital for further evaluation & treatment.

A. DiGiovanna M.D.

12/26/66 Admitted at 7:00 pm

He was admitted

Pt. Pulse 100/min

B.P. 120/80

The urethral penile skin is clear

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December 27, 1966

Psychiatric Division

Deputy Warden Andrew JUDGE

Inmate Francisco MARTINEZ, #265-4208

The above captioned 23 year old male was referred for psychiatric evaluation because of an attempted escape.

On interview, this inmate is rather verbal, coherent and relevant. His stream of thought is sustained and he does not show psychotic or schizophrenic trends at this moment.

DIAGNOSTIC IMPRESSION: No psychosis at this time.

JOSE HERRERA, M. D.
QUALIFIED PSYCHIATRIST

DEPARTMENT OF CORRECTION
MEDICAL DIVISION

COPY

CONSULTATION REQUEST

To: _____ Clinic Date 1/27/67

_____ Hospital

REQUEST: Psychiatry Consult

Inmate claims that he has frequent thoughts about self-injury. He scratched self with steel wire today; ~~EXXXXXXX~~ Diffusely anxious as well. Please evaluate.

/s/ C.A. Yannuzzi M.D.

Referring Physician

Institution _____ Tel. _____

Ext. _____

(Pertinent data must be presented)

OPINION:

Date: _____ M.D.

Signature of Consultant

Tel. _____

Ext. _____

(Use reverse side if needed)

Name of Patient	Correction Department Institution	Patient's Identification Number
Martinez, Francisco	1 B	265-4208

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Department of Correction — Intradepartmental Memorandum

Date : Feb 3, 1967

From : Franklin S Klaf M.D

To :

Subject :

MARTINEZ, FRANCISCO #265423

This 27 year old PR O was seen today for evaluation. He escaped from isolation on Dec 26, 1966 and was returned to today. He has spent 2 years in Kings Park State Hospital and 2 years in Kings Co. He also served 5 years in Attica. He is serving sentence at Rikers, which was the result of the escape. On January 10, 1967 he swallowed part of a razor blade

United States Appeared disappointed during PR O. Says that he has not eaten solid food in 3 days because he expects it to be his last meal. Talks to God and Jesus (declared 1961) and they speak to him. Suicidal ideation present Hallucinations present. Delusions appear

Dx Schizophrenia catatonic, Chronic type

Recommend: 1) Transfer to place outside of institution apart from radiation

2) Stelazine 2 mg TID x 30 days

Cogentin 2 mg QID x 30 days

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...partment ... — Interdepartmental Memorandum

Date :
February 3, 1967

From :
Dr. Burall, Psychiatrist in Charge

To :
James A. Thomas, Warden

Subject :
MARTINEZ, Francisco #269-A208

The inmate is a 27 year old married male seen at your request. He has a very long antisocial history going back to his early childhood and at age 8 was sent to Waccamic State School. He says he was also at Kings Park State Hospital at age 13 but doesn't recall why or the treatment he received. No contact with psychiatrist or hospital in the past 12 years.

He now states that he isn't eating because the food is poisoned (food log indicates he is eating). He also says he swallowed a piece of a razor-blade although no foreign body was noted on X-ray. He complains of black-out and visual hallucinations of his dead uncle.

On examination he is a somewhat dejected but cooperative young man. He talks freely and does not seem particularly nervous. His conversation is logical and coherent, his thought are well-formed and appropriately expressed. His stream of thought follows a logical progression of ideas. His range of affect is quite good and appropriate and his thought content. He does not seem depressed.

In summary we have an antisocial and manipulative individual who is not being truthful with us. In as much as the mental examination does not reveal any distortion of thought processes or of any mood disturbance, I conclude that there is no significant mental illness at the present time.

IMPRESSION: Antisocial personality.

In my opinion he can remain in Administrative Segregation.

BERTRAM BURALL, M.D.
PSYCHIATRIST IN CHARGE

BB:jj
cc: Dr. Fortnow
D/J Judge

DEPARTMENT OF CORRECTION
MEDICAL DIVISION

CONSULTATION REQUEST

To: Psychiatric Clinic

Hospital

Date 2-7-67

REQUEST:

Swallowed razor blade yesterday; sent to Bellevue for X-Ray & treatment. Has been in the right jacket since last suicide admission of the right jacket

F. Vasura M.D.
Referring Physician

Institution Tel.

Ext.

(Pertinent data must be presented)

OPINION:

On psychiatric examination, this patient appears rather despondent. At this point, his physical condition is of primary importance and he should be treated accordingly. He does not require restraints but strict supervision should be imposed to avoid any new attempts against himself until further evaluation.

JOSE MENDEZ, M.D.
QUALIFIED PSYCHIATRIST

Date: 2/6/67

M.D.
Signature of Consultant

Tel.

Ext.

(Use reverse side if needed)

Name of Patient	Correction Department Institution	Patient's Identification Number
Rivera, Francisco	Fxd pl.	215-42-08 222

March 10, 1967

Bertram Barall, M.D., Director of Professional Services, Mental Health Unit

James A. Thomas, Wardon, Adult Division

INMATE MARTINEZ, FRANCISCO #265-4203

The inmate is a 27 year old separated male seen at your request. He was examined for 40 minutes by myself and Mr. Kohler. His previous examination, dated February 3, 1967 was reviewed.

He was returned from Bellevue Hospital Psychiatric Prison Ward yesterday. His transfer to Bellevue took place after he allegedly swallowed half a razor blade, wrapped in paper "so I wouldn't cut my throat". There is no corroborating information available about this razor blade. The history he presents is similar to that he presented previously. He says he was hearing voices, seeing visions, and felt people were plotting against him and saying bad things about him.

He has a long antisocial history, was a heroin user until a few years ago; has since used cocaine. He was at Kings Park State Hospital as an adolescent but has not had any state hospitalizations in the past 12 years.

On examination he is a talkative, cooperative young man, somewhat downcast but not significantly anxious. His conversation is logical and coherent. His associations follow a logical progression and his thoughts are well expressed. His range of affect is adequate and appropriate to his verbal productions. He does not seem depressed or suicidal.

In summary he seems about the same as during his previous examination. He has a long antisocial history and faces a good deal of prison time. The only evidence of mental illness which he presents is entirely subjective and consists of his statements concerning hallucinations and people trying to hurt him. The objective parts of the mental examination, such as his thought processes, association of ideas, and mood disturbances, all seem essentially negative. In my opinion therefore he is not suffering from a psychotic process and should not be considered for commitment to a state hospital.

IMPRESSION: Antisocial Personality.

RECOMMENDATIONS: 1. Can be discharged from Mental Observation.

2. To be housed according to security needs.

BB:er
cc Dr. Kleiman

BERTRAM BARALL, M.D.
Director of Professional Services
Mental Health Unit

Form 27 Med.

NEW YORK STATE DEPARTMENT OF MENTAL HYGIENE

SUPPLEMENTAL STATISTICAL DATA OF ADMISSION

DANNEMORA STATE HOSPITAL

Name of Licensed Hospital

1. Identification No.	2. Hospital No.	3. Patient's Name (Last, First, Middle)	4. Sex	5. Date of Admission
85 | 39 | 32	7976	MARTINEZ, Francisco	Male	May 22, 19

6. Psychiatric Classification

Group: Syphilis with psychopathic psychosis Type: Schizoid

7. Significant Disorders Not Implicit in the Psychiatric Classification

8. Medical Services Received

[1] Special Medical [2] Surgical [4] Physical Therapy

9. Date of Inpatient Status Termination

10. Psychiatric Services Received

[X] Psychotropic Drugs [1] Electroconvulsive Therapy [1] Psychological Tests

[2] Individual Psychotherapy [2] Insulin Shock Therapy [2] Occupational Therapy

[4] Group Psychotherapy [4] Recreational Therapy

Received May 26, 1967 Sing Sing Prison #139629
Received May 29, 1967 - D.S.H.

Military Record: None

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S—25,000—6-1-51.

STATE OF NEW YORK DEPARTMENT OF MENTAL HYGIENE

RECEIVED
WARDEN'S OFFICE
SING SING PRISON

SING SING PRISON
Institution

1967 MAY 29 PM 3:46

PSYCHIATRIC PROGRESS NOTES

Name MARTINEZ, Francis No. 139-629

May 29, 1967:

Inmate was interviewed today at H.B.C. with the help of an interpreter. He appeared depressed and untidy. He did not know his name and his age. He stated that he couldn't sleep last night because the cell was closing in on him. He heard voices telling him that he murdered someone and that he is to be electrocuted. He again stated that his deceased mother appeared in his cell and comforted him. At the end of the interview inmate set fire to his mattress and when asked for the reason he claimed that the "bugs" there were annoying him.

It is felt that inmate is acutely psychotic and potentially dangerous to himself and others. He should be hospitalized immediately.

Emanuel Hacken, MD

EMANUEL HACKEN, M. D.
Psychiatrist

EH:hl

cc: Deputy Warden
T. Contrera
File

D.S.H. 14 8-66 3M

STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

Prev. Adm. _____

NOTES

HOSPITAL No. 7976

NAME Francisco Martinez *D.C.I. No.* _____

Admitted: May 29, 1967

By: Adolfo M. Aparicio, M.D.
Senior Psychiatrist

May 29, 1967

MENTAL EXAMINATION

ATTITUDE AND GENERAL BEHAVIOR

This is a 27 year old pt. who during the interview was quiet and well behaved, but at times uncooperative and disturbed. He has been kept in restraint because of his assaultive behavior. He is sleeping and eating fairly well. He is taking his medication.

STREAM OF MENTAL ACTIVITY

His verbal productivity is about the normal. At times he is spontaneous, relefant and logical, but sometimes during the interview he became irrelevant and illogical. Contact with him is fair.

EMOTIONAL REACTION

He shows inappropriate emotional reaction. Sometimes during the interview he became very guarded and he refused to answer many of the questions because, as he said, "they are irrelevant."

MENTAL TREND AND CONTENT OF THOUGHT

He said, "I have been in trouble since I had a car accident at the age of 9. I had been for about three years in Kings Park Hospital. I have also been in Wasaic State School for about two years. Now I became very depressed at the prison. I was hearing voices, I don't know who was talking to me or what they were telling me, I was confused. Because I was not getting any attention I burned my

attress so I think that is why I was transferred to this institution. I still have headaches." I do not have any other recallections.

ORIENTATION

Pt. is well oriented to the three spheres.

EMOTE MEMORY

Good. He gave a good account of past events.

ECENT MEMORY

Good. He gave a good account of recent events.

ETENTION AND IMMEDIATE RECALL

Fair. He repeated five digits forward and four backward.

EADING

Fair. He gave a poor synopsis of the C.B. story.

RITING

FAir. He wrote with his right hand.

SCHOOL AND GENERAL KNOWLEDGE

He claims he finished the 9th grade, but his general knowledge is below that level.

COUNTING AND CALCULATION

He gave prompt and correct answers when asked how much is 100 mi[illegible] 12, but he is unable to answer when asked how much is 8 times 6 or 9 times 7.

INTELLIGENCE RATING

According with the record he had not had the Psychometric test done.

INSIGHT

Although he admits he had been in different mental hospitals he denies to be or had been mentally sick.

SIMILARITIES

On similarities he said:

cigar & cigarette - tobacco

river & brook - I don't know

STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

Prev. Adm. _____

NOTES

HOSPITAL No. 7976

NAME Francisco Martinez *D.C.I. No.* _____

Admitted: May 29, 1967

door & gate - entrance

lion & dog - have tails

dwarf & child - small

JUDGMENT

Very poor.

Adolfo M. Aparicio, M.D.
Senior Psychiatrist

AMA:lac

D.B.H. 14 4-67 2M

STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

Prev. Adm. _____

NOTES

HOSPITAL No. 7976

NAME Francisco Martinez *D.C.I. No.* 145905X

Admitted: May 29, 1967

Francisco Martinez was admitted to the Dannemora State Hospital on May 29, 1967 by transfer from Sing Sing Prison, where he was serving sentence for the crimes of (1) Att. Robbery 1° - 7-6-0/15-0-0 (2) PDW, Fel. 7-0-0/14-0-0 conc. (3) Att. G.L. 1° - 7-6-0/10-0-0 conc and (4) Assault 2° - 7-6-0/10-0-0 conc. He was sentenced on October 4, 1966 in the Supreme Court of New York County, Hon. Gellinoff presiding. His full term of sentence will expire on January 27, 1982 and he is scheduled to meet the Parole Board March 6, 1972.

ON ADMISSION

Patient is quiet and well behaved during the interview although he has a record of assaultive behavior. He is, at times, uncooperative and he refuses to answer many of the questions because "they are irrelevant." He says that "since I had a car accident at the age of 9 I have been having headaches and I started having problems." He admits he had been a patient in Kings Park for about three years and Wassaic State School for about two years. When questioned about his transfer to this Institution he says: "I became depressed and confused. I was hearing voices. I don't know whose voice or what they were telling me. One day I burned my mattress so I think that is why I was transferred. I was trying to get some attention." He denies homosexual tendencies but he admits excessive use of alcohol and the use of marijuana and heroin for about 10 years. He has no insight and his judgment

is impaired. He was placed on Mellaril 100 mg t.i.d. and kept in restraint.

Adolfo M. Aparicio, M.D.
Senior Psychiatrist

AMA/mp

June 7, 1967: Report received from the New York State Department of Health: VDRL Slide Test: weakly reactive. Fluorescent Treponemal Antibody Absorption (FTA-ABS) Test: Nonreactive. (vah)

June 12, 1967: Martinez is somewhat better, quiet, cooperative, but was emotionally superficial, retarded, evasive and irrational. He stated that in prison he became depressed, confused also hearing voices, but denied to be depressed at the present time and denied also hearing the voices at the present time. He asked to be employed and today he was transferred from Wd. 12A to Wd. 12 in order to work in the laundry. He takes Mellaril 100 mg. t.i.d. (lac)

June 22, 1967: Martinez was today seen by Dr. Charles E. Niles, Inspector General for the Department of Mental Hygiene and accorded the privileges of the statute. (cma) W E Niles M.D.

July 6, 1967: Martinez is working in the laundry. He appeared orinted, cooperative, emotionally superficial, evasive, and retarded. He stated that in prison he was sick, confused, depressed, and was hearing the voices there and here for three weeks. He denied to be depressed and denied to have any other troubles. His physical health is satisfactory. He takes Mellaril 100mg t.i.d. (cma)

August 8, 1967: Patient has been seen at the clinic. He complains of weakness of legs. No history of syphilis in his records. On June 7, 1967 - VDRL Slide Test: weakly reactive, Fluorescent Treponornal Antibody Absorption Test: nonreactive. Physical examination is negative. BP:115-60, P:72 regular, T:98, R:20. Last CBC shows, Hgb:14.2, WBC:7950, N:50, L:30, M:16, E:1, B:2, Hct:44%. Urine negative. Ordered B1 - 2 ml 1.m. daily for five

D.S.H. 14 6-67 2M

STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

Prev. Adm.

NOTES

HOSPITAL No. 7976

NAME Francisco Martinez *D.C.I. No.* 145905

Admitted: May 29, 1967

CONTINUATION OF AUGUST 8, 1967 NOTE: days. (sd) Garcia

August 21, 1967: Martinez is working in the laundry. He appeared oriented, cooperative, emotionally superficial, retarded and paranoid. He stated that in prison he burned his mattress because he was upset that he did not receive the proper medication and attention. He said that since he was suffering from gonorrhea, he is suffering from swelling of his legs, but there was no swelling in evidence. He also admitted evasively that he was hearing the voices in prison and here and said that maybe it was in his dreams. He denied to have any other problems. His physical health is satisfactory. Mellaril 100 mg t.i.d. to be continued. (mp)

September 7, 1967: Martinez is working in the laundry but he is delusional, paranoid, emotionally superficial and admitted that he hears dream-like voices occasionally. He maintains his idea that he has trouble with his legs from gonorrhea. In order to have Intensive Treatment he was transferred from Ward 12 to Ward 10. Medication the same. (mp)

September 14, 1967: Inmate today received in the mail a copy of memorandum in opposition to the defendant's motion for reargument of a Coram Nobis Application signed by Frank S. Hogan, District Attorney of New York County. (rt) Returned

September 27, 1967: Martinez was today released into the custody of S. Conwell, Correction Officer, New York City Department of Correction, Shield No. 214, for presentation in Bronx County Supreme

Court for necessary disposition of indictment, in compliance with an Order signed by the Hon. Morris E. Spector, Supreme Court Justice. A Copy of this Order is filed in patient's Central File Folder. (rt)

September 26, 1967: Patient is going to court. Physical examination is negative. BP:102-72, P:82 regular, T:98.2. (sd)

September 27, 1967: Martinez was transferred from Ward 10 to Ward 12A because he had to go to Court. (gj)

October 20, 1967: Martinez today received in the mail an order signed by the Hon. Abraham Gellinoff dated October 13, 1967 denying his motion for a Writ of Error Coram Nobis -- Supreme Court, New York County. (jml)

October 26, 1967: Martinez is out to Court. Due to administrative reasons he was transferred from Ward 12A to Ward 7. (mp)

June 10, 1968: Martinez was today returned to the institution by the New York City Department of Correction, after having been released into their custody on September 27, 1967 for presentation in Bronx County Supreme Court for "Necessary Disposition of ~~Indictment~~" Disposition on this indictment is not known.

June 11, 1968: Martinez appeared oriented, cooperative, fairly rational, stated that he was well treated in the County Jail and had no trouble there. He requested to be returned to Ward 10 for continuation of his Intensive Therapy there and today he was transferred from Ward 7 to Ward 10. His physical health is satisfactory. (gj)

June 12, 1968: Patient was transferred to Ward 10 from Ward 7 on June 11, 1968. Since his arrival to Ward 10 Patient has been complaining that he was beaten several times while at Rockland. (On September 27, 1967 Martinez was released to the custody of the New York City Department of Correction. According to our records, while at Court, he was detained at Bronx City Prison and Manhattan House of Detention.) Patient

NEW NOTE DATE STARTED

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STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

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NOTES

HOSPITAL No. 7976

NAME Francisco Martinez D.C.I. No. 14[illegible]

Admitted: May 29, 1967

NOTE DATED JUNE 12, 1968 (CONTINUED):

also said that he has many, many marks and every three or four days he is having very mild hematuria. According to Patient's statement, he has in mind, or his lawyer has in mind, to sue the institution he was in because of the beatings. It is the opinion of the undersigned that the Patient should have a thorough examination to determine if there is any reason for his complaints. Dr. Gorlicki was notified of this. (gj)

June 13, 1968 It was brought to the undersigned's attention that this patient had stated that he had hematuria. The patient on his return from court two days ago made no mention of this at the time of the examination, following his return.

When seen this morning, the patient stated again that his attorney asked him to make certain that the doctors in our hospital make note of the marks on his body, which the patient alleges, were caused by being struck and beaten with keys at another institution. The patient states that none of the marks were made at Dannemora State Hospital, and that he had them prior to being admitted to our institution.

When asked why he had not reported or told the undersigned about his hematuria, on his return from court and while the undersigned was examining him, he said, that he had hematuria three or four times, but it was not while he was at Dannemora State Hospital. He further stated that . sometimes when he urinated he passed a stream of red blood. He also requested that his weight be

aken, stating that his attorney requested this and that records had been istroyed at another institution, Although we did not see the value of eighing him, this morning we ceded to his wishes and as of this date, June 3, 1968 the patient weighs 138 pounds.

The patient then stated that in two or three weeks his attorney was oing to ask for all records from all hospitals or institutions that, he the atient has been in, and that he did not wish to get any one at Dannemora in rouble so he was telling us what the attorney intended to do.

Patient also stated that two x-rays were done of his abdomen. At his time he held his hands between the lower portion of his rib cage and his roin. When asked why they were taken, he said that he was not certain. That hey were taken at another institution and he feels that they were distroy- d. However, the patient did say that, in one institution, they told him that he x-rays were negative and there was no blood in his urine. In other words, he urinalsis was reported as negative.

Because of this patient's allegations a CBC, urinalysis and a test for ccult blood was ordered, a study of urinary sediment every third day for even times to rule out any hematuria. Further studies including IV. Pyelo- raphy will be ordered, when and if indicated. At this point the patient was eturned to Ward 10. Prior to his return, an officer handed the undersigned he following notes, which he stated were taken from the records of this atient. Patient came to Dannemora State Hospital May 29, 1967. This is the irst time he has been at this hospital. He stated that he got his first eating on December 26, 1966, in the City "Pen". Following the beating the atient claimed he had pain in his legs. Allegedly the patient told the octors at Dannemora State Hospital about this pain, which he had in 1967 and e was given "vitamin shots". The patient sent back to City "Pen" on Sept- mber 27, 1967 and there the patient was beaten again allegedly three times. atient now complained of pain in his legs and back and patient thinks that e is hurt inside. Patient points to all marks which are on him, which he

SW NOTESHEET STARTED

STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

*Prev. Adm.*_____

NOTES

HOSPITAL No. 7976

NAME Francisco Martinez *D.C.I. No.* 145905X

Admitted: May 29, 1967

NOTE DATED JUNE 13, 1968 CONTINUED

got in the City "Pen" from the officers keys, which they used to hit him with. Patient has about 10 marks on him that he says are where the officers hit him with keys (arms, back, legs).

The undersigned noted many marks in the areas noted which the patient alleged were made by being beaten with keys. These marks which the patient pointed out were noted not to be indurated and patient has so many areas of skin discoloration that, at this time, it is impossible to give any medical reason for the marks noted. Most of the discolorations appear to be large freckles. Again the undersigned stresses the fact that this patient repeatdly stated that he was to point these out to the examing physician or physicians at Dannemora State Hospital when, he the patient, returned from court. According to the officer who accompanied the patient to the clinic this morning, June 13, 1968, the patient would like to know if he has any medical records from the City "Pen". Apparently he claimed that he was passing some blood in the City "Pen" and the patient told about the x-rays that were taken at the City "Pen", which, the patient claims, he does not know what became of them. Another brief note on this same sheet states that the patient should go back to the city in approximately three weeks, probably he means the city hospital. The patient gave the names of his lawyers as Fisher and Seidmed, Counsellors at Law 225 Broadway, New York, New York. (emR)

Irving Gentley, M.D.

une 19, 1968: Pt. complained of vague non-specific symptoms, "my belly utton gets hard, when I press it feels pain. My hear beats fast, I have a ittle pain in this leg." Examination was negative. No treatment. He has ad for a long time a skin rash which I consider to be Pytiriasis versicolor nd which has been treated already according to his statement. (lab) Cont'd

une 25, 1968: On June 10, 1968 Martinez was returned to this institution fter having been presented in Bronx County Court for Necessary Disposition f Indictment. At the time of his return, it was noted that one of the arrants which accompanied him was missing. Inquiry was made of the ourt Clerk regarding this Warrant and he advises that Martinez plead guilty o Violation of Section 1694 Penal Law (a misdemeanor) of the third ount of this indictment to cover the indictment. Sentence was suspended ith no probation by the Hon. Sidney A. Fine. Therefore, this Warrant has een disposed of. (rt) Returned

uly 2, 1968: Patient Martinez has been complaining almost daily to the ndersigned that there is something wrong in his abdomen. He believes hat his adominal problems started when, as he says, he was beaten at he time he was in the County Jail. Last Friday, June 28, 1968, Patient pproached the interviewer and said, "Doctor, please do all kinds of -rays to determine if I have anything wrong in my abdomen. If every- hing is all right place me back on medication. I can not stand this ny longer." In order to determine if this is a psychosomatic complaint atient has been scheduled to have a complete G.I. study. Martinez s quiet and in general well behaved, logical but complaining almost onstantly, as I said before, of somatic complaints. He also has in ind, as instructed by his lawyer, that he should have a complete hysical examination and x-rays in this institution in order to sue he institution he was in before, charging them with brutal treatment. [illegible] for the time being.

[illegible]

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STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

Prev. Adm. _____

NOTES

HOSPITAL No. 7996

NAME Francisco Martinez D.C.I. No. 11-590[illegible]

Admitted: May 29, 1967

LAST NOTE DATED JULY 2, 1968:

July 10, 1968: A GI series was taken on this day and read on July 17, 1968, no specific pathology noted. (cmg) [signature]

August 7, 1968: At 12:15 P.M. on August 7, 1968 Patient Martinez had a fight in the mess hall with Patient Joseph Crescimanno, #8104. Both patients were placed in jackets and during the meeting in the afternoon it was evident that Patient Crescimanno had fabricated the story that Patient Martinez had a homosexual act with him last night. According with patients statement to the interviewer, Crescimanno was trying to get Patient Martinez out of Ward 10 so he wouldn't have any problem to approach Patient William Martinez regarding his homosexual activities. Patient Martinez asked Crescimanno if this was true and when he had a confirmation from Crescima[illegible], he struck him on the left eye. In order to avoid possible repercussions of this problem, Patient Crescimanno was removed from the jacket and transferred from Ward 10 to Ward 9. Patient Martinez was removed from the jacket. (gj) [signature]

September 6, 1968: This patient was to have an I.V.P.

This patient had requested this be done and it was ordered by Dr. Aparicio. Yesterday afternoon, Dr. Gorlicki in conference with the undersigned, stated that the patient had refused to take the castor oil and the enema and requested that the undersigned speak to Mr. Martinez in the morning to see if he would cooperate.

Mr. Martinez was seen in the clinic. He stated that he did want the I.V.P., that he would take the castor oil but he refused

the enema as he alleges this combination was given to him two years ago where they also did an E.K.G. and fluoroscopic examination and because of this he had stomach complaints.

The undersigned explained that an I.V.P. would be worthless without proper preparation and an enema would have to be given in order to clear out the lower bowel. He was also told it was doubtful that he would have a recurrence of the trouble he had previously. It would appear at this time that he appears to be asytematic. The patient continued to refuse the I.V.P. preparatory procedures. The X-ray Department was informed and Mr. Ashline was instructed to put on his note that the patient refused the enema after a full explanation as to why it should be given and must be given. A similar note of refusal was put on the clinical ward sheet. The I.V.P. is not to be done unless patient consents to all necessary preparatory procedures. (gj) Rupert Bentley

*September 13, 1968

September 18, 1968: Presented today at staff to consider his return to prison. He indicates today that he has simulated in prison mental symptoms because of dissatisfaction and frustrations of not having been represer by a good lawyer and for having received a harsh sentence, "I wanted t come here I hear it is a good place". He does admit that he was depressed, unhappy and felt desperate. Today he says he feels well a believes that he will be able to make a better adjustment in prison. He will return on September 25, 1968. Carl

September 13, 1968: He has been making a good hospital adjustment and has been cooperative. He has been from 9/27/67 to 6/10/68 in the county court and away from the hospital. Since his return he has had a variety of physical complaints for which there was no physical basis.

DIAGNOSIS: Psychosis with Psychopathic Personality, Schizoid. Carl

D.S.H. 14 9-68

STATE OF NEW YORK—DANNEMORA STATE HOSPITAL

*Prev. Adm.*_____

NOTES

HOSPITAL No. 7976

NAME Francisco Martinez *D.C.I. No.* 145905X

Admitted: May 29, 1967

CONTINUATION OF NOTE DATED SEPTEMBER 18, 1968

RECOMMENDATION ON DISCHARGE: Transferred to Clinton Prison.

CONDITION ON DISCHARGE: Recovered.

DATE OF DISCHARGE: September 25, 1968.

Izaak Gorlicki, M.D.
Assistant Director

IG:lab

STATE OF NEW YORK
DEPARTMENT OF CORRECTION

DANNEMORA STATE HOSPITAL
DANNEMORA, N.Y

R. E. HEROLD M.D.
DIRECTOR

September 24, 1968

#7976

Sir:

In accordance with the provisions of Section 386, Chapter 243 of the Laws of 1929, I hereby certify that in my opinion the hereinafter described convict has recovered his right mind and reason:

FRANCISCO MARTINEZ: Sentenced on October 4, 1966, for the crimes of (1) Attempted Robbery 1°; (2) Attempted Grand Larceny 1°; (3) P.D.W., Felony; (4) Assault 2°, at a term of the Supreme Court of New York County, Hon. Abraham J. Gellinoff presiding. Received at Sing Sing Prison on May 26, 1967 and subsequently on May 29, 1967 at the Dannemora State Hospital.

Director

To: Hon. J. Edwin LaVallee
Warden
Clinton Prison
Dannemora, New York

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D.S.H. 99 1-67 2M

CONFIDENTIAL AND PRIVILEGED COMMUNICATION. FOR PROFESSIONAL PURPOSES ONLY. NOT TO BE USED AGAINST THE INTERESTS OF THE PATIENT.

DANNEMORA STATE HOSPITAL CLINICAL SUMMARY

Name Francisco Martinez Iden. No. Hosp. No. 7976

Sex Male Age on admission 27 Birthplace Puerto Rico

Citizen, alien, non-resident, single, married, widowed, divorced, separated.

Date of admission May 29, 1967 Date of Summary July 28, 1967

Name and address of nearest relative No known correspondents

DIAGNOSIS

Francisco Martinez was admitted to the Dannemora State Hospital on May 29, 1967 by transfer from Sing Sing Prison where he was serving terms of (1)7-6-0/15-0-0 (2)7-0-0/14-0-0 (3)7-6-0/10-0-0 (4)7-6-0/10-0-0 for the crimes of (1)Att. Robb. 1°, (2)Att. G.L. 1°, (3)P.D.W., Fel. (4)Asslt. 2°. He was sentenced on October 4, 1966 in the Supreme Court of New York County with the Hon. Abraham J. Gellinoff presiding.

FAMILY HISTORY

Has no brother who is a drug addict.

PERSONAL HISTORY

Pt. was born in Puerto de Tierra, Puerto Rico on December 6, 1939. He is the fourth of five children born to his parents. He attended P.S. and Junior High School in Manhattan, New York in which schod he was in an ungraded class. At these schools his conduct, work and attendance were unsatisfactory and he was considered a disciplinary and truant problem. On January 1951 he was adjudged a neglected child by the children's court, Manhattan and was committed to the Wassaic State School. On January 1952 he was Institutionalized at the Wassaic State School and he was diagnosised as Mental Deficiency with an I.Q. of 63. On February 1954 and following his discharge from Wassaic State School he was adjudged a Delinquent child. On December 1954 he was committed to the Kings Park State Hospital by the children's court. He has no military record. He worked. He had worked at his father's Spanish-American Grocery store, but not for too long. On February 1965 he married because his wife was pregnant and he had a charge of rape which was dismissed after he married. He is of the Roman Catholic faith, but he neglected his church services.

CRIMINAL HISTORY

Feb. 23, 1954	Juvenile Delinquent	Children's Court	Discharged
March 31, 1954	Delinquent child	"	Probation
October 4, 1954	Delinquent Child	"	Discharged
Dec. 1, 1954	"	"	Kings Park ST. Hosp.

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t. 22, 1957	Assault 3°	Special Sessions	Discharged recognizance
rch 24, 1958	Poss. of Burglars' Tools	Special Sessions Bronx	Not available
rch 3, 1959	Att. G.L. 2°	General Sessions	State Prison
rch 4, 1959	Criminally Rec. Stolen Property	Special Sessions	Discharged
rch 4, 1959	Unlawful Poss. of Hypodermic Needle	Special Sessions	Sentence Suspen
ugust 7, 1963	Assault 3°	Supreme Court	Penitentiary 1 y
rch 30, 1964	Violation of Parole	Division on Parole	State Prison
ebruary 26, 1965	Rape as a Misdemeanor	Criminal Court	Discharged
ctober 7, 1965	Assault 3	Criminal Court	Penitentiary 1

RESENT OFFENSE: Att. Robbery 1° and A tt. G.L. 1°.

REVIOUS ADMISSION TO MENTAL HOSPITAL

None.

NS[redacted] OF MENTAL ILLNESS

On May 29, 1967 Pt. was admitted to D.S.H. form Sing Sing Prison. The onse f his mental illness was characterized by hallucinations (that he had murdered omeone and that he is to be electrocuted) and depression. Pt. set fire to his attress because the "bugs were annoying him", according to the order of transfer.

ENTAL EXAMINATION

Pt. is quiet and well behaved during the interview although he has a record f assaultive behavior. He is, at times, uncooperative and he refuses to answer any of the questions because "they are irrelevant." He says that "since I had car accident at the age of 9 I have been having headaches and I started having roblems." He admits he had been a patient in Kings Park for about three years nd Wassaic State School for about two yers. When questioned about his transfer o this Inst. he says: "I became depressed and confused. I was hearing voices. [redacted] d[redacted]t know whose voice or what they were telling me. One day I burned my attress so I think that is why I was transferred. I was trying to get some ttention." He denies homosexual tendencies but he admits excessive use of lcohol and the use of marijuana and heroin for about 10 years. He has no insig nd his judgment is impaired. He was placed on Mellaril 100 mg. t.i.d. and kept n restraint.

PHYSICAL EXAMINATION:

This is a 27 year old white male of undetermined body tyoe, slightly impair ision bilateraly, few teeth missing. Otherwise no deviation from the normal. ay 31, 1967: Chest X-ray: Negative. June 7, 1967: VDRL Slide TEst: weakly eactive. Fluorescent Ereponemal antibody absroption (FTA-ABS) Test: Nonreacti ay 31, 1967: Hct: 51%. Urine: Negative.

Adolfo M. Aparicio, M.D.
Senior Psychiatrist

MA:lac

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DANNEMORA STATE HOSPITAL CLINICAL SUMMARY

Name Francisco Martinez Iden. No. _____ Hosp. No. 7976

Sex. Male Age on admission 27 Brithplace Puerto Rico

Citizen, alien, non-resident, single, married, widowed, divorced, separated.

Date of admission _____ Date of Summary _____

Name and address of nearest relative _____

DIAGNOSIS _____ Page 3.

September 13, 1968: Progress Since Admission:

He has been making a good hospital adjustment and has been cooperative. He has been from 9/27/67 to 6/10/68 in the County Court and away from the hospital. Since his return he has had a variety of physical complaints for which there was no physical basis.

Izaak Gorlicki M.D.

Izaak Gorlicki, M.D.
Assistant Director

IG/gj

September 18, 1968: Presented today at staff to consider his return to prison. He indicates today that he has simulated in prison mental symptoms because of dissatisfaction and frustrations of not having been represented by a good lawyer and for having received a harsh sentence. "I wanted to come here I hear it is a good place." He does admit that he was depressed, unhappy and felt desperate. Today he says he feels well and believes he will be able to make a better adjustment in prison. He will be returned on September 25, 1968.

DIAGNOSIS: Psychosis with Psychopathic Personality, Schizoid. T. A. 63.

RECOMMENDATION ON DISCHARGE: Transferred to Clinton Prison.

CONDITION ON DISCHARGE: Recovered.

DATE OF DISCHARGE: September 25, 1968.

Izaak Gorlicki, M.D.
Assistant Director

IG/gj

HOSPITAL RECORD

NO. 7976 NAME Francisco Martinez

IN -- OUT _____ DIAGNOSIS _____ RESULT _____

IN _____ OUT DIAGNOSIS _____ RESULT _____

IN _____ OUT DIAGNOSIS _____ RESULT _____

SICK CALL RECORD

Chest x-ray: Sept. 23, 1968
Scattered bilateral calcifications:
essentially negative.

PHYSICAL EXAMINATION UPON DISCHARGE

HEAD & NECK No deformities

EYES photophabia VISION RIGHT 20/30 VISION LEFT 20/30

EARS no pathology noted RIGHT EAR 15/10- tuning fork 4" LEFT EAR 15/10 -tuning fork

NOSE & THROAT No pathology noted

TEETH Several teeth missing

CHEST No pathology noted LUNGS Clear

HEART No pathology noted -apex 5th inter space B. P. 96/64

ABDOMEN No masses -no tenderness-no liver nor spleen enlarg. mid-clavicular lines

G. U. SYSTEM Negative -no pathology

RECTAL Pilonydal-post op. no discharge noted SKIN old acne scars GLANDS no lymphadenitis nor lymphadenopathy.

BONES & JOINTS No pathology noted Pathology noted.

EXTREMITY Sluggish reflexes

NERVOUS SYSTEM Lower extreme - sluggish reflexes

WASSERMAN TEST

WEIGHT ON DISCHARGE 131½ INCREASE -- DECREASE 12½

PSYCHIATRIC CLASSIFICATION Recovered PHYSICAL CLASSIFICATION ON DISCHARGE

DISCHARGE SUMMARY This 28 yr. old w/m has photophabia slightly defective vision bilaterally, 3° bilateral hearing defect (tuning fork 4") several teeth missing, low scars noted on body. Reflexes are sluggish in lower extremities. Pt. has lost 12½ lbs., otherwise exam is essentially negative.

DATE OF DISCHARGE Sept. 25, 1968

SIGNED _____ M. D.

Robert M. P. Bentley, M. D.

STATE OF NEW YORK DEPARTMENT OF CORRECTION

DANNEMORA STATE HOSPITAL

R 1

Certificate of Prisoners Received

ame MARTINEZ, Francisco Institution Number 7976

ntence (1) 7-6-0/15-0-0 (2) 7-0-0/14-0-0 Concur. (3) 7-6-0/10-0-0 Concur. (4) 7-6-0/10-0-0 Concur. Maximum Expiration Date January 27, 1982

ime (1) Att. Robb. 1° (2) Att. G.L. 1° (3) Poss. Dang. Weapon, Fel. (4) Asslt. 2° Parole Status Eligible for Parole March 6, 1972

Purpose of Custody Transfer

Presentation in Bronx County Supreme Court for necessary disposition on indictment.

Medical and/or Psychiatry Requirements

Martinez was admitted to this hospital on May 29, 1967. At the present time, he appears rather retarded and is meotionally superficial. He also expresses some persecutory ideas. He is still mentally ill and should be watched very closely. He is receiving Mellaril, 100 mg. three times daily - one week supply is being furnished. This medication should be continued.

Warrants on File

(6) 1. Bronx Co., Charge: Burglary and Viol. Sec. 1694 P.L., Docket #A2456. 2. N.Y. Co., Charge: Unlic. Oper., Docket #1229036. 3. N.Y. Co., Charge: Signal Light and Unlic. Oper., Docket Nos. 1330474 and 1330475. 4. Kings Co., Charge: Unreg. Vehicle, Docket #596519. 5. Kings Co., Charge Improper Lights, Docket #596518. 6. Kings Co., Charge: Unlic. Oper., Docket #596517.

Accompanying Documents

Letter to attending physician regarding medication.
Six Warrants - listed above.

ceived this date, the above prisoner and accompanying documents

Signed S. Connell

te September 27, 1967 Title C.O Shield No.: 214

(over)

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C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

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80 EXCHANGE PL. AT BROADWAY, N.Y.C. 10004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No.

Plaintiff

against

Defendant

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 651 Vanderbilt Street, Brooklyn, New York 11218

That on June 4, *1975 deponent served the annexed*

petitioner-appellant's appendix

on Ralph L. McMurry, Esq., Assistant Attorney General for the State of New York

attorney(s) for *in this action at* #2 World Trade Center, Rm. 4501, New York, N.Y. 10047

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in ~~a post office~~ official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
4th day of June, 1975.

Joan Ann Annicaro

JOAN ANN ANNICARO
NOTARY PUBLIC, State of New York
No. 52-0128463
Qualified in Suffolk County
Certificate filed in New York County
Term Expires March 30, 1977

Joseph H. Schnabel

The name signed must be printed beneath

JOSEPH H. SCHNABEL